

1 voice, but I was straining on this side. So I wanted
2 to ask for some clarification.

3 I really had heard about the
4 commission's work and the validity of the report, and
5 they made several recommendations. First of all, I
6 think the recommendation concluded that we needed to
7 have a REAL ID to possibly use for voting purposes.
8 Is that not correct?

9 MS. QUINN: They recommended that that
10 was a very good choice to use, yes.

11 SEN. VAN de PUTTE: And I'm looking at
12 the report here on Page 19 that said, "For the next
13 two federal elections, until January 1, 2010, in
14 states that require voters to present ID at the polls,
15 voters who fail to do so should nonetheless be allowed
16 to cast a provisional ballot, and their ballot would
17 count if their signature is verified. After the REAL
18 ID is phased in," and they think it's -- according to
19 this report, it was supposed to have been phased in in
20 January of 2010 -- that "voters without a valid photo
21 ID, meaning a REAL ID or an EAC-template ID, could
22 cast a provisional ballot, but they would have to
23 return" in 48 hours to present something. Was that
24 the recommendation?

25 MS. QUINN: That's certainly covered on

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1 Page 19 of the report, yes, ma'am.

2 SEN. VAN de PUTTE: My question is, in
3 all of this, was there ever any work done to account
4 for the number of naturalized citizens that would be
5 participating that would not have the type of
6 documentation that would be required?

7 MS. QUINN: I'm not aware of such
8 information. That doesn't mean it's not here. And
9 again, I would be happy to look into that and get back
10 to you.

11 SEN. VAN de PUTTE: Was there ever any
12 work done before the commission recommendations
13 about -- because it talked about in particular
14 African- American voters -- but the access to get an
15 ID for Hispanic voters?

16 MS. QUINN: Again, ma'am, I do not
17 recall any such thing, but I would be happy to check
18 into it and get back to you.

19 SEN. VAN de PUTTE: However, the report
20 did note that the priority population gender-wise who
21 did not have photo ID was women. Is that not correct,
22 as affirmed in the report?

23 MS. QUINN: They were concerned about
24 any population that would have trouble getting voter
25 identification, and that's why they suggested that it

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1 should be free and that states should affirmatively
2 try to make sure they're reaching out to populations
3 that would be less likely to have identification.

4 SEN. VAN de PUTTE: And identifies in
5 the commission report the No. 1 population that lacks
6 a photo ID as women?

7 MS. QUINN: Correct.

8 SEN. VAN de PUTTE: Yes.

9 MS. QUINN: I'm relying on the fact that
10 you think there is a place in here where it says that.
11 I do not specifically recall it. But I'm happy to
12 agree with you, that they were concerned about all
13 populations.

14 SEN. VAN de PUTTE: I wanted to ask you,
15 the commission's report also asked that states use a
16 unique identifier. Can you quantify for us, with
17 regard to photo IDs, what is a unique identifier?

18 MS. QUINN: I think the reference to
19 unique identifiers was talking about a number, a
20 unique number identifier. I will say, however, that
21 photographs are, in their own way, a unique
22 identifier.

23 SEN. VAN de PUTTE: Well, I think,
24 according to the commission, the unique identifier has
25 to be a number. In the case of the REAL ID, that

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1 number is dictated to be your social security number.

2 MS. QUINN: Yes.

3 SEN. VAN de PUTTE: Other states have
4 chosen the route of privacy and not having identify
5 some sort of numbering system that they have. But, of
6 course, as we know with the rulemaking currently
7 having gone forward on REAL ID, that is a social
8 security. My question is, on the unique identifier
9 that's a social security number and with the photo ID,
10 was there ever any work done when naturalized
11 citizens' names do not correspond to the identifier?

12 MS. QUINN: Not that I'm aware of, but
13 I'm happy to check into that and get back to you.

14 SEN. VAN de PUTTE: And the reason I ask
15 you is, for naturalized citizens, particularly those
16 coming from Spanish speaking counties, the mother's
17 maiden name is the last name.

18 MS. QUINN: Yes, I know.

19 SEN. VAN de PUTTE: So the father's name
20 is actually in the middle name. So when you're a
21 naturalized citizen, your papers or your identifier, I
22 would have been listed as Leticia San Miguel Aguilar,
23 even though Aguilar, my mother's maiden name, not part
24 of any identification or any papers that I would have
25 here; and, yet, the unique identifier would be a

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1 social security.

2 For our naturalized citizens, which last
3 year were 53,000 in this state -- the biggest increase
4 that we've ever had -- the identifier would not match
5 up with the name, because in Spanish surnamed
6 individuals, the mother's maiden name goes last.

7 Was there any work done, to your
8 knowledge, at the commission or any work that you know
9 of to note that this would be a very different type of
10 discrimination to be able to prove up simply because
11 the cultural norm is one which the mother's maiden
12 name is last?

13 MS. QUINN: Again, Senator, not that I'm
14 aware of, but I would be happy to check into it.

15 SEN. VAN de PUTTE: Thank you. The last
16 question that I have is, since in Texas -- you do know
17 our demographics?

18 MS. QUINN: Not particularly well,
19 ma'am. I would be happy, if you want to refresh my
20 recollection.

21 SEN. VAN de PUTTE: Well, my work is
22 that I understand that in the commission there was a
23 former Atlanta mayor, Andrew Young on the commission.
24 Is that correct?

25 MS. QUINN: No, ma'am. He actually --

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1 SEN. VAN de PUTTE: Was he an advisor?

2 MS. QUINN: No, ma'am. He appeared
3 before the commission at a private dinner and spoke
4 with them.

5 SEN. VAN de PUTTE: So the document that
6 you have on the commission and the recommendations on
7 the voter integrity, which commissioners were that,
8 that were Hispanic?

9 MS. QUINN: Hold on just one second, and
10 I will tell you those who seemed to have an Hispanic
11 surname. I cannot tell you necessarily that they are
12 the only commission members who are Hispanic.

13 What did I do with that? Here we go.

14 The only one who has an Hispanic
15 surname, and he was President of the National Council
16 of La Raza, is Raul -- Yzaguirre?

17 SEN. VAN de PUTTE: That's correct.
18 Thank you. I wanted to make sure that the
19 recommendations fit, because there's very little in
20 the commission. And part of our job here is to make
21 sure that whatever we enact doesn't unduly burden.
22 And most of the work cited has been done using
23 African-American and not Hispanic populations, given
24 that the states that have enacted these types of laws
25 have not had a significant amount of Hispanics. So I

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1 appreciate that and hope that your visit here
2 continues to be fun for you.

3 MS. QUINN: Thank you very much.

4 SEN. VAN de PUTTE: Thanks.

5 SEN. DUNCAN: Sen. Williams.

6 SEN. WILLIAMS: Thank you, Mr. Chairman.

7 And, Ms. Quinn, thank you for joining us
8 today. I'm sorry for the late hour. I would like to
9 direct the committee's attention to the report.
10 You've made several references to different portions
11 of it. But on Page 69 of the report where the
12 conclusions are drawn, if you would join me there.

13 And I would ask the committee to direct
14 their attention to Page 69. And they refer to here --
15 really, we've heard about 87 recommendations in all
16 this. There's really five pillars, as they refer to
17 them here, five main themes that run throughout this
18 entire report about the recommendation, and I would
19 like to visit with you about those a little bit.

20 They say in the first one, ". . . we
21 propose a universal, state-based, top-down,
22 interactive, and interoperable registration list that
23 [will], if implemented successfully, [will] eliminate
24 the vast majority of complaints currently leveled
25 against the election system."

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1 Now, that is very lofty language and
2 lofty goals that we have here. But I believe -- my
3 recollection -- I've served on the State Affairs
4 Committee here which considers election-related
5 legislation. And my recollection is that the HAVA
6 legislation that we considered there, the Help America
7 Vote Act, which we were required to implement and
8 phase in over a couple of election cycles, is what
9 addressed this concern.

10 We refer to it in Texas as the TEAM
11 project over at the Secretary of State's office. So
12 is that what you were making reference to? You were
13 making a more broad reference. I'm trying to get a
14 little more specific here.

15 MS. QUINN: Yes, Senator. When you
16 mentioned TEAM, I remembered that Ann McGeehan, when
17 she would come to the elections meetings would talk
18 about TEAM.

19 SEN. WILLIAMS: Okay. And then secondly
20 is the issue about photo ID. And, of course, that's
21 what we're debating here with 362. And, of course,
22 we're still struggling with the implementation of the
23 REAL ID Act, as many states are, but we're making
24 progress toward that.

25 And then third and finally -- or not

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1 third and finally -- but thirdly, they say they would
2 propose measures that would increase voting
3 participation by connecting registration and the ID
4 process. Now, I don't know that we've implemented
5 anything new since the Carter-Baker Report came out.
6 But would this include -- you know, we have here in
7 Texas a couple of weeks of early voting where you can
8 go and -- convenience voting it's often referred to.

9 So the election really doesn't happen on
10 one day; it happens over a couple of weeks. And
11 typically, what happens, it will start on a Monday, it
12 will include a weekend voting time. And then
13 convenience voting will often conclude on the Friday
14 before the election following on Tuesday. Would that
15 be the sort of thing that they're referring to here,
16 to make it more convenient for people to vote? I
17 mean, that's not something new that we've done, but
18 we've had that here for a long time.

19 MS. QUINN: Well, I believe that would
20 be one of the kinds of things they were referring to.
21 There's a fairly significant number of them.

22 I think also you-all have a witness
23 coming from Houston who will be talking about the
24 electronic votes that I think they are experimenting
25 with. That certainly is the same kind of thing --

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1 SEN. WILLIAMS: Right.

2 MS. QUINN: -- that ties voter
3 registration and identification and is intended to
4 make things easier.

5 SEN. WILLIAMS: Right. What I was going
6 to say here, we have so many people now in our state
7 registered to vote when they get their driver's -- if
8 they have a change of address, and that's something
9 that we actually implemented when the motor voter laws
10 came into effect back in the mid-nineties sometime.

11 MS. QUINN: Yes.

12 SEN. WILLIAMS: So those are the kinds
13 of things that we're referring to here, I think. And
14 I just want to make sure that -- and then the fourth
15 thing is this component -- I would refer to it as an
16 educational component, and that is to help voters
17 become more aware of voting and what they need to do
18 and what's involved in all that.

19 And so we have -- the Secretary of
20 State's office -- and I don't pretend that I would be
21 an expert on it -- but our Vote Texas Project that
22 worked through the Secretary of State's office was a
23 HAVA-compliant voter education project. Was that
24 commonly done when HAVA was enacted, to try to move
25 these things forward?

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1 MS. QUINN: A lot of states, after the
2 passage of HAVA, used some of their HAVA funds to, in
3 fact, increase voter communications and voter
4 education, because in many cases -- and I know it's
5 certainly true in Virginia -- at the state level, I
6 have not only zero budget for voter education, but it
7 was not considered to be part of my mandate as a state
8 official prior to HAVA.

9 SEN. WILLIAMS: Right. And then their
10 final recommendation was the restructuring of the
11 system by which elections have been administered in
12 our country. They propose the Election Assistance
13 Commission and so forth. I'm not sure what all this
14 means. I would have to dig into the report. It
15 sounds pretty dramatic. But would this include things
16 like electronic voting or is that really more in the
17 stuff -- I know we have a lot of educational
18 components in my area related to electronic voting.
19 They make sure -- you know, they put these electronic
20 voting machines in supermarkets and libraries and
21 things like that, where people can try them out before
22 election day gets here. Is this referring to that or
23 is it a more sweeping change?

24 MS. QUINN: Well, what they had in mind
25 was the concern that was expressed in 2000 with

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1 Catherine Harris and at other times with other
2 election officials who often are, or have been in the
3 past, sharers of a candidate's committee that was
4 running on the ballot.

5 SEN. WILLIAMS: Yes.

6 MS. QUINN: That varies across the
7 states. In Virginia, for example, while I was not
8 legally mandated not to, it was understood and it was
9 tradition and it was always done in Virginia, that no
10 election official at the State Board of Elections
11 would be involved in any ballot on the ticket, from
12 president down to the lowest ballot on -- or the
13 lowest item on any ballot in the state.

14 SEN. WILLIAMS: Right.

15 MS. QUINN: So I would not, for example,
16 ever contribute money to any race that was in the
17 state. I would not be involved as a volunteer. I
18 would not be involved certainly in any official
19 capacity. And I think that's the kinds of things that
20 they were getting at, was that election officials,
21 while operating as election officials, should stay out
22 of the partisan political fray, to the extent that
23 they were not themselves on a ticket. Can I --

24 SEN. WILLIAMS: So, for instance, in a
25 county like where I live, in Montgomery County, we

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1 have an election administrator who doesn't run for
2 office, and it's a non-partisan position. She's hired
3 by the Commissioners Court or what other places will
4 call the Board of Supervisors that administers the
5 elections in our county. So that's the sort of thing
6 that you're talking about?

7 MS. QUINN: Yes, sir. I love to tell
8 this. I had a deputy when I was at the state board
9 who had a phrase I loved. She says, "When I get here
10 in the morning, I park my donkeys at the door."

11 SEN. WILLIAMS: There you go. So I
12 guess then in summary, as I look over this -- because
13 it had been asserted by Sen. Ellis earlier that really
14 we were kind of just picking this one requirement out
15 of the report. It would seem to me that out of the
16 five areas that they have, Texas has actually recently
17 made very substantial progress on at least four of
18 those things and maybe some progress on that fifth.
19 I'm not really sure what that fifth one means. It
20 seems like it's pretty -- you could pretty broadly
21 define and put a lot of things in that category.

22 So thank you again so much. Would you
23 agree with my conclusion there, that it's not really
24 fair to say that there's only one thing that we're
25 doing out of this, we've actually made substantial

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1 progress? And I'm sure that that will help jog --
2 since Sen. Ellis and I served on that State Affairs
3 Committee together, I'm sure that will help jog his
4 memory about some of the good work we've done together
5 there. As I recall, all of these measures passed out
6 of the committee without any opposition and passed --
7 my recollection is that they passed this body with a
8 31 to nothing vote. So thank you very much.

9 MS. QUINN: Thank you, Senator.

10 SEN. DUNCAN: Thank you, Sen. Williams.

11 Ms. Quinn, there are no other senators
12 queued up, so you are excused. Thank you for your
13 testimony.

14 MS. QUINN: Thank you, sir.

15 SEN. DUNCAN: Sen. Wentworth.

16 SEN. WENTWORTH: Mr. President, I offer
17 as exhibit -- and the appropriate number, I think 18
18 or 19 -- letters --

19 SEN. DUNCAN: Hold on a minute. Let's
20 get the correct number so that it will be identified
21 in the record.

22 The next number is 19, so what you're
23 discussing will be Exhibit 19.

24 SEN. WENTWORTH: Yes, sir, letters
25 involving the Federal Election Commission that was

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1 discussed by a previous witness.

2 SEN. DUNCAN: Well, okay. Bring it
3 forward.

4 Okay. Exhibit 19 is a letter from the
5 letterhead, dated June 29, 2007, to the Honorable
6 Dianne Feinstein and the Honorable Robert Bennett.
7 And it is -- I think the letter is signed by --

8 SEN. WEST: Mr. President --

9 SEN. WENTWORTH: Signature is shown on
10 Page 18, Hans A. von Spakovsky.

11 SEN. DUNCAN: Hans von Spakovsky.

12 SEN. WENTWORTH: And in addition,
13 Mr. President, there were letters also recommending
14 his appointment to the Federal Election Commission.

15 SEN. DUNCAN: All right. There are
16 several letters that are, I think, attached as
17 exhibits to the letter dated --

18 SEN. WENTWORTH: Yes, sir.

19 SEN. DUNCAN: -- June 29, 2007.

20 SEN. WENTWORTH: Actually, there are a
21 couple of attachments to that, and then there are
22 other separate letters of recommendation to the
23 Federal Election Commission.

24 SEN. DUNCAN: Okay. So those would be
25 separate letters, not attached to 19?

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1 SEN. WENTWORTH: Yes, sir. There are 14
2 such separate letters.

3 SEN. DUNCAN: So you're going to present
4 all of those letters as one exhibit, Exhibit 19?

5 SEN. WENTWORTH: Yes, sir; yes, sir.

6 SEN. DUNCAN: All right. It will be
7 received.

8 (Exhibit No. 19 marked and admitted)

9 SEN. DUNCAN: Sen. Gallegos.

10 SEN. GALLEGOS: Mr. Chairman, whatever
11 was just introduced by Sen. Wentworth, I would like to
12 see a copy of whatever was introduced.

13 SEN. WENTWORTH: Well, Mr. President, I
14 would like to see a copy of the other 18 exhibits that
15 have been submitted to the Secretary, without any of
16 us seeing any copies of them.

17 SEN. LUCIO: I would like.

18 SEN. GALLEGOS: I mean, you know, I just
19 don't know what was -- but if it's entered into the
20 record, I would like to see a copy of it.

21 SEN. WENTWORTH: I'll be glad to make a
22 copy for him, Mr. President.

23 SEN. DUNCAN: We'll make a copy for you,
24 Senator. We'll make copies for whomever wants one.
25 Of if everybody wants one, that will be fine.

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1 SEN. WENTWORTH: That's fine with me.

2 SEN. DUNCAN: Sen. Shapleigh?

3 SEN. SHAPLEIGH: Mr. Chair,

4 Sen. Wentworth's offer of that letter has jogged my
5 memory. Here are letters from the Brennan Center
6 against Mr. Spakovsky, members, signed by one, two,
7 three, four, five, six, seven, eight, nine, ten,
8 eleven, twelve, thirteen, fourteen, fifteen --
9 seventeen members of Congress against his nomination,
10 letters from Common Cause against his nomination,
11 letters from the Civil Rights Committee -- Lawyers
12 Civil Rights Committee against his nomination --
13 letters by the Campaign for Legal Center and Common
14 Cause against his nomination and letters from the
15 members of the United States -- I'm sorry -- from the
16 Campaign Legal Center that I would like to include in
17 the record, to make it more complete, as Exhibit 19.

18 SEN. DUNCAN: Well, I think yours would
19 be a separate exhibit. Sen. Wentworth has offered up
20 an Exhibit 19, which would be admitted into the
21 record. And you are offering Exhibit No. 20, which
22 contain the letters that you have just described to
23 the body. Is that correct?

24 You'll need to say that on a mike,
25 please.

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1 SEN. SHAPLEIGH: I would offer these
2 letters to make them a part of the record.

3 SEN. DUNCAN: All right. Thank you very
4 much. Bring them forward and well put them in the
5 record.

6 (Exhibit No. 20 marked and admitted)

7 SEN. WENTWORTH: Mr. Chairman?

8 SEN. DUNCAN: Sen. Wentworth.

9 SEN. WENTWORTH: Could I, since
10 Sen. Shapleigh has been more precise about the
11 letters, may I do the same for Exhibit 19?

12 SEN. DUNCAN: You have the floor.

13 SEN. WENTWORTH: One letter is co-signed
14 by six members of Congress, recommending his
15 nomination to the Federal Election Commission. We
16 have letters from the Secretary of State of Kentucky;
17 Secretary of State of Indiana; the County Clerk of
18 Harris County, Texas; the Chairman of the Forsyth
19 County Board of Elections in Georgia; Mr. P. K.
20 Brunelli with the Federal Voting Assistance Program of
21 the Department of Defense at the Pentagon; from
22 Mr. Wendron Close from the United Kingdom; from Tom
23 Lowe, Fulton County Commissioner in Georgia; Mr. Frank
24 Strickland, who is Chairman of the Board of Directors
25 of the Legal Services Corporation; United States

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1 Senator Johnny Isakson; T. Rogers Wade, President of
2 the Georgia Public Policy Foundation; Wesley Kliner,
3 Vice Chairman of the United States Election Assistance
4 Commission Board of Advisors; and, finally, Ray
5 Martinez III, former Commissioner of the United States
6 Election Assistance Commission.

7 Thank you, Mr. Chairman.

8 SEN. DUNCAN: It will be submitted.

9 Record noted.

10 Members, our next witness is Dr. Toby
11 Moore. Will Mr. Moore step up.

12 And you have 10 minutes, Mr. Moore.

13 Thank you.

14 DR. MOORE: Thank you. And thank you to
15 the senators for the opportunity to speak to you
16 today.

17 SEN. DUNCAN: You need to state your
18 name, too, and who you are representing.

19 **TESTIMONY BY TOBY MOORE**

20 DR. MOORE: My name is Toby Moore, and
21 I'm a Project Director in Elections Research for the
22 Research Triangle Institute, a non-profit,
23 non-partisan research institute. I'm speaking on my
24 own behalf today.

25 Before joining RTI in 2007, I was a

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1 project manager for the Carter-Baker Commission on
2 election reform at American University. From 2000 to
3 2006, I was the geographer of the voting section of
4 the Civil Rights Division of the U.S. Department of
5 Justice. My Ph.D. is from the University of Iowa in
6 geography, which makes me the first non-attorney
7 witness you've had. When we get to the questions, I
8 guess we'll find out if that's a help or a hindrance.

9 My experience is in election data. I'm
10 currently conducting the U.S. Election Assistance
11 Commission's 2008 Election Day Survey. In that
12 capacity, I've had the pleasure of working with Ann
13 McGeehan, Kim Thole and the very fine staff in the
14 Elections Division. I became involved in voter ID
15 research for the first time in 2005, as part of the
16 team that conducted the review of the 2005 Georgia ID
17 law for the Department of Justice.

18 Voter ID has obviously become a very
19 partisan issue and an emotional one for many people.
20 I think that my testimony today, I'll concentrate on
21 really two things that I think will be the most use
22 for the Senate. First, I wanted to provide as
23 objective a survey of the current research in the
24 field as I can. And second, based on my experience
25 working on Section 5 pre-clearance cases at the

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1 Department of Justice, I discuss the substantial
2 challenges the state faces in trying to meet its
3 burden under the Voting Rights Act. I also would be
4 welcome to talk with you about the Carter-Baker
5 Commission and its recommendation, although in the
6 interest of time, I may leave that for the questions.

7 We should know more about the effects of
8 voter ID than we do. In many ways the research
9 community has failed policymakers by not producing
10 better findings. However, some recent studies have
11 come up that I think are finally providing us with an
12 initial picture of the group of people who don't have
13 voter ID and the demographics of that group. To begin
14 with, I think it is clear from public opinion surveys
15 that most Americans support requiring a photo ID in
16 order to vote.

17 There have been kind of three approaches
18 to trying to identify those without IDs and to
19 determine their demographics. The first approach has
20 been to try to match between data bases, between voter
21 registration databases and Department of Motor Vehicle
22 databases, for example. That has generally not proven
23 to be successful. Those databases are very difficult
24 to match between. There is some interesting
25 information to come out of those attempts. But in

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1 general, I would encourage you to avoid any kind of
2 database matching to arrive at your information.

3 The second approach -- and we've heard
4 much about this today -- has been to look at the
5 impact on turnout. There are two ways to do that.
6 The first is to use very sophisticated statistical
7 modeling techniques to try to determine before and
8 after ID laws where there is a drop-off in voting.
9 The results have been across the board. Some studies
10 have found increases, some have found no change, and
11 some studies have found decreases, especially among
12 minority voters.

13 There is a forthcoming paper from
14 Lorraine Minnite and Robert Erickson that assesses
15 these attempts at modeling turnout changes. They
16 conclude that our tools and data are inadequate for
17 detecting any impact. I would encourage you to look
18 at that paper. We simply don't have good enough data
19 or statistical tools that would allow us to detect the
20 changes in turnout that could be traced to voter ID
21 laws. Even worse, though, are these blunt attempts to
22 use aggregate turnout to try to detect changes in
23 turnout that can be attributed to voter ID?

24 I think it's important to remember that
25 voter ID laws, whether you're in favor or opposed to

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1 them, are designed to do one thing, and that's to
2 reduce voter turnout, if only among fraudulent voters.
3 That makes it impossible, to my mind, to be able to
4 interpret the results of these findings.

5 If turnout goes up after a voter ID law,
6 then why have you not been able to stop the fraudulent
7 votes and have that appear in the turnout? Basically
8 what happens, I think, is that voter turnout -- the
9 impact of voter ID is small enough that it's swamped
10 by other factors such as Obama running, such as
11 Georgia and Indiana being seen at battleground states
12 and presidential candidates putting resources in and
13 voters coming out. I mean, comparing Georgia and
14 Indiana, which we're seeing as competitive states to
15 Mississippi and Illinois, is the sort of facile
16 analysis that I just don't think holds up very well.
17 It's certainly not social science, and I don't think
18 it's even very good rhetoric.

19 On the issue of whether voter ID causes
20 turnout to increase by boosting confidence, I would
21 point you to a recent paper by Ansolabehere and
22 Persily who surveyed voters and found that perceptions
23 of voter fraud had no impact on turnout. It's an
24 interesting idea, but I know of no reliable
25 information that traces increased willingness to

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1 participate to a belief in integrity in elections.

2 Finally, I think that the survey, the
3 research that's most useful is the survey research
4 that's come out, including one done by the Carter-
5 Baker Commission that I initiated in 2006. They found
6 that 1.2 percent of registered votes in three states
7 lacked IDs. This may seem like a small number. But
8 when applied to Texas in 2008, it would have meant
9 that approximately 162,901 registered voters would
10 have lacked a government-issued photo ID.

11 Because of the way the study was
12 designed, that is probably a floor, and there is
13 reason to think that the number could be substantially
14 higher in Texas. But I would think that the 162,000
15 number is a very defensible floor for the population
16 we're talking about.

17 More importantly, the Carter-Baker
18 sponsored study found that African-Americans were more
19 than four times more likely than whites to lack photo
20 ID. Women made up nearly all of those who did not
21 have photo ID. Nearly all of those who lacked ID were
22 Democrats. And 88 percent of those without photo ID
23 had a household income below \$25,000 a year.

24 Now, this was a survey of registered
25 voters. When your law goes before the Department of

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1 Justice, they're also going to be considering its
2 impact on voters who are not registered but who are
3 eligible to vote. And there is reason to think that
4 that pool of voters is even more disproportionally
5 minority and maybe larger in proportion to their size
6 of people who lack ID.

7 Now, finally, as we all know, this is a
8 law that will have to go before the Voting Rights
9 Section, Civil Rights Division of the Department of
10 Justice to be cleared under the Voting Rights Act.
11 The state should not take comfort in the Supreme
12 Court's upholding of the Indiana voter ID law. As the
13 Bush Administration argued when federal courts blocked
14 the 2005 Georgia ID law that had been precleared, the
15 Section 5 analysis is distinct from the constitutional
16 analysis. The Section 5 review will be a comparison
17 of the current Texas law to the proposed law. The
18 state will be required to prove that its proposed law
19 does not deny or abridge the right to vote on account
20 of race, color or membership in a language minority
21 group. I expect that the Obama Justice Department
22 will put the burden on Texas to prove its case, unlike
23 the Bush Administration's handling of the 2005 Georgia
24 law.

25 Not knowing the effect of the law on

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1 protected groups -- African-Americans, Hispanics,
2 language minority groups and others -- will be an
3 invitation to the Department of Justice to object on
4 the basis of the state having not met its statutory
5 burden.

6 Specifically, based on my experience in
7 the Georgia case and other Section 5 cases, I expect
8 DOJ at a minimum will look for:

9 First, evidence that Texas knows the
10 number and demographic make-up of eligible voters and
11 registered voters who lack the required ID;

12 Second, well-developed and well-funded
13 public education programs to make voters aware of the
14 new requirements, initiated well before the
15 implementation of the new law. Again, this is what
16 Georgia and Indiana did;

17 Revamped poll worker training to
18 emphasize the correct enforcement of the new, more
19 complicated ID requirements;

20 Well-developed and well-funded programs
21 to distribute the required IDs. I don't think, from
22 my reading of the current bill, that the provision for
23 free ID will be adequate;

24 Substantial evidence of the voter
25 impersonation problem that the law addresses;

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1 And finally, a detailed discussion of
2 why less retrogressive alternatives, including use of
3 an affidavit fail-safe, were not adopted.

4 Texas faces a substantial cost on two
5 fronts: First, to develop and fund the necessary
6 supporting programs to fairly implement any law; and
7 second, to develop a convincing submission to what I
8 would expect to be a skeptical Civil Rights Division.

9 In the questions period, I would be glad
10 to talk about some of the information that I have on
11 the cost of these programs, on the specific
12 recommendation of the Carter-Baker Commission and on
13 some of the less retrogressive alternatives that Texas
14 might want to consider.

15 Thank you.

16 SEN. WENTWORTH: The Chair recognizes
17 Sen. Van de Putte.

18 SEN. VAN de PUTTE: Thank you,
19 Mr. Chairman.

20 **QUESTIONS FROM SENATE FLOOR**

21 SEN. VAN de PUTTE: Dr. Moore, thank you
22 for being here today. And there are a few things that
23 I would like to ask to make sure that I understand the
24 impact of your testimony.

25 I know that we've said that President

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1 Jimmy Carter advocated for a photo ID as part of the
2 Carter-Baker Commission. Can you expand a little bit
3 on that? I know that part of your testimony just
4 touched on it. But what particular point are you
5 concerned about with regard to the recommendations in
6 the commission that have been part of the record that
7 we are going to put into the Committee of the Whole
8 and your observations as to the implications of such?

9 DR. MOORE: Thank you. Again, I was
10 Program Manager at American University and worked on
11 the follow-up work to trying to get the commission's
12 87 recommendations implemented. And to me, the ID
13 law -- and in our discussions, we worked with Congress
14 in 2006 during the debate on ID laws there and working
15 with members to understand what the Commission was
16 really trying to do.

17 And the commission really had a
18 two-pronged approach. The first was yes on voter ID,
19 but the second was to use the voter ID as a way of
20 expanding participation and expanding enfranchisement.
21 And it called for a very aggressive role on the part
22 of the states to take the lead in getting people
23 registered and in getting people the voter ID that
24 they would need under the new law.

25 And I think it's telling that the

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1 Georgia law of 2005, which I think is very close to
2 the present state of the Texas legislation, triggered
3 the opposition from Secretary Baker and President
4 Carter, because it failed in these important facets.

5 Also, as you talked about earlier, the
6 phased-in implementation to allow voters to cast
7 provisional ballots before they lost their vote. And
8 the commission was very interested in replacing the
9 patchwork national quilt of ID laws with a national
10 standard. What the commission was very interested in
11 was one national standard.

12 And so what you have now is I think in
13 some ways exactly what the commission feared, which
14 was a piecemeal approach toward implementing ID laws
15 and which will have very dramatic differences between
16 states such as Georgia and Indiana and other states.

17 SEN. VAN de PUTTE: Thank you.

18 Dr. Moore, I know that the commission
19 made these recommendations. But given your work, what
20 evidence is there that those who lack photo ID are
21 more likely to be women?

22 DR. MOORE: Well, I think some of the
23 best evidence is the survey that the commission
24 sponsored in 2007 which found that nearly all the
25 people who responded to their survey -- and they

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1 surveyed 2,000 registered voters in three states --
2 almost all of their respondents who did not have ID
3 were, in fact, women.

4 This is doubly troubling when you're
5 talking about ID, because women run into name
6 problems. Women's names change. They marry; they
7 divorce. And if your ID doesn't match the name on
8 your registration, then you run into more confusion
9 from that, so that's another reason to take that
10 problem even more seriously.

11 SEN. VAN de PUTTE: And, Dr. Moore, I
12 know that we probably don't have the data in Texas,
13 but if you were to use that American University survey
14 approach that you described and apply it to Texas, do
15 you have some sort of idea, given that that is a good
16 survey instrument, how many voters in Texas would
17 totally lack a photo ID?

18 DR. MOORE: AS a minimum, I think
19 somewhere around 162,900, which is applying that same
20 ratio. That ratio is probably low for Texas, because
21 that survey was based in states like Indiana which had
22 a very high ID ownership as a result, in part, because
23 of the voter ID law. So I would expect that Texas'
24 actual number would be somewhat higher than that.

25 SEN. VAN de PUTTE: Well, if it was even

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1 8 percent and we have about 13.7, 13.6 million voters,
2 if it was even a more conservative estimate that only
3 8 percent, would that be a substantial number that
4 would have difficulty in meeting any pre-clearance
5 from the Department of Justice?

6 DR. MOORE: Yes. I think that's
7 actually a higher estimate, the 8 percent. I think
8 that if you -- if Texas were to investigate this and
9 come up with that figure and the demographics of the
10 group without ID, you would have a very, very
11 difficult time getting it through pre-clearance or
12 through federal courts if nearly one in 10 voters
13 lacked ID.

14 SEN. VAN de PUTTE: And as we know that
15 this is a foregone conclusion, at least here in the
16 Texas Senate, in the event that our state would seek
17 approval from the Department of Justice, who bears the
18 burden of proving up the effects of the photo
19 identification?

20 DR. MOORE: Well, unlike in the federal
21 court cases under Section 5 pre-clearance review, the
22 State of Texas would have that burden.

23 SEN. VAN de PUTTE: So those of us or
24 those groups who would claim that it would be
25 discriminatory do not bear the burden, it's the state

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1 that would have to prove that the voter ID requirement
2 does not have a discriminatory impact. Is that
3 correct?

4 DR. MOORE: That's correct.

5 SEN. VAN de PUTTE: So the Department of
6 Justice -- help me understand -- the Department of
7 Justice doesn't have to produce affirmative evidence
8 of how the ID laws will discriminate against minority
9 voters to deny pre-clearance, does it?

10 DR. MOORE: No.

11 SEN. VAN de PUTTE: So the Department of
12 Justice can block a photo ID bill from taking effect
13 if they find that the state has failed to show that
14 the law is free of a discriminatory purpose or effect.
15 Correct?

16 DR. MOORE: That's correct.

17 SEN. VAN de PUTTE: So what kind of data
18 would the state need to prove it up?

19 DR. MOORE: Well, I don't think that the
20 threshold will be a definitive answer. I mean, I
21 don't think there is a definitive answer. Even if you
22 funded a well-funded survey, you would still have
23 error rates around your survey responses and so on.

24 But I think what the Department of
25 Justice will look for, which is what we looked for

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1 when I was there, would be a good-faith effort to
2 identify that population and then have built the
3 legislation to address any problems you found with it.
4 But I think the first step is to try to identify that
5 pool of people who don't have ID and find out what is
6 their makeup in regards to the protected groups under
7 Section 5.

8 SEN. VAN de PUTTE: So if the data is
9 not known by the state or cannot be proved or produced
10 by the state, they cannot show that the voter ID bill
11 meets the requirements of the Voting Rights Act
12 requirement?

13 DR. MOORE: That's right.

14 SEN. VAN de PUTTE: And so should we be
15 concerned, as a state, about eligible but
16 non-registered voters in this?

17 DR. MOORE: Eligible but non-registered
18 voters would be protected by this Section 5 of the
19 Voting Rights Act.

20 SEN. VAN de PUTTE: So, in other words,
21 this would be folks that would be eligible, but for
22 our efforts would really not end up being able to cast
23 a ballot. Is that correct?

24 DR. MOORE: That's right. They will
25 enter into the analysis.

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1 SEN. VAN de PUTTE: You mentioned just
2 briefly at the end that other states that have
3 implemented this, Indiana, of course, didn't have to
4 go through the process that we do. But, you know,
5 Georgia had somewhat. I don't know if they have the
6 language diversity that we have, in particular these
7 language-based groups.

8 But because we have that in our state
9 and we are -- the new data shows that over half of our
10 first graders are actually Hispanic, and because of
11 our high number of naturalized citizens that are in
12 Texas, what would it cost a state like Texas, given
13 what's occurred in other states, to develop and
14 implement the public education component that again
15 the Department of Justice would say would prove up the
16 state's ability to ensure that there wouldn't be
17 discrimination? I mean, what kind of costs are we
18 talking about?

19 DR. MOORE: Well, if you look at
20 Georgia's example -- and again, Georgia is a Section 5
21 state -- and remember that the 2005 law that Georgia
22 passed, which is similar I think in many ways to this
23 law and that was pre-cleared by the Justice
24 Department, was blocked by federal and state courts
25 and abandoned by Georgia itself.

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1 In fact, the Bush Administration is
2 pretty much the only people left to defend the 2005
3 Georgia law. They went back to the courts with a
4 revamped 2006 law. This law had provision for free
5 ID. This law opened offices across the state in every
6 county. And this law included a public education
7 campaign of half a million dollars a year targeted
8 just to informing voters of the effects of voter
9 education.

10 Now, as you said, Texas being a much
11 larger state and with the language diversity that you
12 have, with the multiple media markets you have, you're
13 talking about some multiplier of that half million, I
14 think, if you're going to make an effective effort to
15 inform people of the new voter ID requirements.

16 SEN. VAN de PUTTE: And let me clarify
17 this, because what you're telling us is that the
18 Department of Justice said that Georgia had to go back
19 and revamp because they didn't have these efforts.
20 And, Dr. Moore, I don't know if you've seen, but our
21 fiscal note, which is the estimate of our Legislative
22 Budget Board, to implement the provisions of this bill
23 is zero -- zero, nada, nothing, zilch, nada.

24 And so if a state like Georgia, which is
25 much smaller, was required, because of pre-clearance

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1 and Voting Rights Act, to put an effort, you would
2 assume that it would take Texas a little bit more than
3 zero dollars to do the outreach, to inform the voters,
4 to do the training of our thousands and thousands of
5 election judges at the polling precincts. Is that
6 correct?

7 DR. MOORE: Yes. I think that unless
8 that is part of the legislation and that funding is
9 provided for before it goes to pre-clearance, the
10 Justice Department will be very skeptical that that
11 would ever be really implemented effectively.

12 SEN. VAN de PUTTE: So it's not just the
13 costs that would be incurred in the change in the
14 laws, the training, the outreach, but -- for example,
15 in the State of Texas, in our major metropolitan
16 areas, the locations at where citizens can go get a
17 driver's license are all outside the loops. In Bexar
18 County, there is one inside Loop 410. I think in
19 Houston, there may be -- I don't know if there are
20 any -- but these are where the majority of African-
21 Americans, Hispanics live; yet, there is no office to
22 go get the driver's license or the voter ID. Would
23 this be a significant problem in the viewpoint of the
24 Department of Justice?

25 DR. MOORE: I think if the minority

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1 populations were, you know, very well integrated and
2 there was no correlation between the absence of an
3 office in minority communities, then, no, that would
4 not be a problem. But if Texas has a situation in
5 which you have large minority communities that don't
6 have equal access to DPS offices where they can go and
7 get the ID, then, yes, I would think that is really
8 going to be a red flag for the Department of Justice.

9 SEN. VAN de PUTTE: Now, our bill, with
10 the military, the institutional type IDs, the
11 certificates versus papers of naturalized citizens,
12 it's a little more complex than what we've seen in
13 other states. Is that correct?

14 DR. MOORE: Yes, I think that's true.

15 SEN. VAN de PUTTE: And so since it's
16 more complex, would you think that that would probably
17 require a little bit more training of those election
18 judges in the polling precincts?

19 DR. MOORE: I certainly would think so.
20 I mean, I was in Indiana in 2006, in Indianapolis, and
21 observed the election after their ID law. And even in
22 Indiana where they did a pretty good job of
23 instructing poll workers, there was still ample
24 confusion. And what happens is, the first high
25 turnout you'll have, you'll have much longer lines and

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1 room for conflict if care is not taken to train poll
2 workers to be able to fairly implement this new law.

3 SEN. VAN de PUTTE: And my other
4 question is, again from the other surveys, if
5 8 percent of the folks lack a photo identification --
6 and we have about 13 -- what? -- million plus voters,
7 and not the conservative estimate, that would be a
8 million Texans who are currently registered to vote
9 who don't have a photo ID.

10 DR. MOORE: Yes. And I think what I
11 would say is that the important thing is not for me to
12 have an answer on the estimates of people who don't
13 have an ID but for Texas to have a good estimate.
14 That's what the Department of Justice is going to be
15 looking for. And that's going to be, you know, a
16 significant piece of evidence when this comes to
17 pre-clearance.

18 SEN. VAN de PUTTE: Well, what this
19 fiscal note tells me is that my state is unwilling to
20 put one penny into any efforts to train, to do
21 information, to do education. And certainly if we're
22 providing maybe the one million who don't have them
23 now, with free IDs, what kind of costs -- I mean,
24 given the costs that were in Georgia for this or in
25 other states, what sort of costs are we looking at?

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1 Yet, I guess we're coming up with imaginary numbers
2 here. Who is absorbing this cost? How much do you
3 think it would cost in Texas?

4 DR. MOORE: Well, it depends on how you
5 provide the free IDs. The legislation, as I read it
6 now, does not actually provide free IDs. It provides
7 only free IDs to those who will only use the ID in
8 order to vote, which is very different from Indiana
9 and the 2006 Georgia law.

10 Indiana, when it provided free ID cards
11 when it was considering its legislation, it estimated
12 that the state would lose more than \$700,000 annually
13 in lost revenue and additional expenses from providing
14 free ID. Again, you can do the math in Texas, and I
15 expect it would be considerably higher. But I would
16 expect that, you know, free ID -- if the Texas
17 legislation, as passed and sent to the Department of
18 Justice, does not have a strong free ID provision,
19 then it would be markedly different from even the
20 Georgia and Indiana laws.

21 SEN. VAN de PUTTE: And in your
22 estimate, Dr. Moore, when you've looked at the
23 research and the statistics, a lot of our statistics,
24 we had a lot of new voters in this last election year.
25 But that doesn't account for the citizens of the third

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1 age, our senior citizens that are already registered
2 but don't have the type of identification required in
3 this bill. Is that correct?

4 DR. MOORE: I think there is a general
5 agreement that elderly people are more susceptible to
6 not having proof of ID and proof of citizenship. But,
7 you know, I think the numbers again are difficult to
8 come by good, solid information on that. But yes.

9 SEN. VAN de PUTTE: Thank you,
10 Dr. Moore. I appreciate your answers.

11 SEN. DUNCAN: Okay. Members, I see a
12 lot of lights still on this witness. We've been going
13 now for two hours and 15 minutes. We need to take a
14 short break for our court reporter.

15 I'll remind you that we have witnesses
16 in the gallery that are continuing to -- that will be
17 public testimony -- that are continuing to wait to be
18 heard.

19 The Senate Committee of the Whole will
20 stand at ease until 9:25.

21 (Recess: 9:16 p.m. to 9:29 p.m.)

22 SEN. DUNCAN: The Senate Committee of
23 the Whole will come back to order.

24 Senator Williams, you have the floor.

25 Oh, before you do that, before I forget

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1 to do this, if you wouldn't mind, let me retract that.

2 SEN. WILLIAMS: Sure.

3 SEN. DUNCAN: Dr. Moore has submitted
4 his written testimony for the record as Exhibit 21,
5 and that will be received in the record.

6 (Exhibit No. 21 marked and admitted)

7 SEN. DUNCAN: Sen. Williams.

8 SEN. WILLIAMS: Thank you.

9 Dr. Moore, I would like to direct your
10 attention and the committee's attention to Page 6 of
11 your testimony where you draw your conclusions. And
12 there's a couple of things I wanted to explore with
13 you there. Where you say, "In fact, there are many
14 ways to reasonably ensure the identity of voters
15 without disenfranchising those without ID an or
16 placing unnecessary barriers to the voting booth. The
17 use of affidavits, in particular, creates a paper
18 trail that allows for the enforcement and analysis. A
19 state could run its elections under this sort of law
20 for an election or two, and then survey those voters
21 who vote via the affidavit. This is the pool of
22 voters who would be affected by an absolute photo ID
23 requirement. If the survey finds evidence of fraud,
24 if the affidavit voters were not citizens or voted on
25 bad voter registrations, the law can be tightened."

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1 So I'm trying to understand what you're
2 suggesting there. Are you suggesting that if we
3 suspect that there is some voter fraud going on, that
4 it's okay to have a little bit of it, until we
5 determine whether it's really there or not?

6 DR. MOORE: Yes, in a way. I mean, I
7 think what I'm saying is that, given the little that
8 we know about voter fraud, voter impersonation fraud,
9 and the risk of substantial disenfranchisement, that
10 it's worth continuing what has been I think a fairly
11 successful system of elections, in order to get us the
12 data that would allow us to make better public policy
13 choices.

14 SEN. WILLIAMS: Okay. Well, I think
15 that's -- you know, it's striking to me, in light of
16 some of the conclusions. I mean, the letter from the
17 co-chairs of the Baker-Carter Commission said that,
18 "Elections are the heart of democracy. They are the
19 instrument for the people to choose leaders and hold
20 them accountable. At the same time, elections are a
21 core public function upon which all other government
22 responsibilities depend. If elections are defective,
23 the entire democratic system is at risk."

24 And then in the U.S. Supreme Court
25 decision on the Indiana case, in the majority opinion,

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1 they specifically talk about voter fraud. And they go
2 on to say that, "It remains true [however] that
3 flagrant examples Of such fraud in [other] parts of
4 the country have been documented throughout the
5 Nation's history by respected historians and
6 journalists, that occasional examples have surfaced in
7 recent years, and that Indiana's own experience with
8 fraudulent voting in the 2003 Democratic primary . . .
9 demonstrate that not only [is] the risk of voter fraud
10 [is] real but that it could affect the outcome of a
11 close election.

12 "There is no question about the
13 legitimacy or importance Of the state's interest in
14 counting only the votes of eligible Voters. Moreover,
15 the interest in orderly administration and accurate
16 recordkeeping [is] a sufficient justification for
17 carefully identifying all voters participating in the
18 election process. While the most effective method of
19 preventing election fraud may well be debatable, the
20 propriety of doing so is perfectly clear."

21 And it just seems incredible to me that
22 you would propose that we allow a little bit of fraud
23 until we figure out another way. It just seems very
24 inconsistent with both the Baker-Carter Commission and
25 the Supreme Court decision.

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1 DR. MOORE: I'm sorry. Was there a --
2 SEN. WILLIAMS: I mean, do you care to
3 comment on that?

4 DR. MOORE: I don't think we know enough
5 about voter impersonation fraud, notwithstanding the
6 Supreme Court's decision or Carter-Baker, to
7 enforce -- to effectively draw up a good voter ID
8 regime. There is more than one way to make a bad
9 election system. One bad election system is one
10 riddled with fraud. Another bad election system is
11 one we've had in the United States for many decades
12 prior to the 1960s, which was one that was riddled
13 with disenfranchisement.

14 So I think it's a balancing act. And I
15 think as policymakers, you would be justified in
16 instituting a law that would allow you to gather
17 better data. For instance, the Carter-Baker
18 Commission themselves wanted to phase in their voter
19 ID requirement and allow people to vote provisionally
20 and have that ballot counted. So I think the
21 Carter-Baker Commission is doing the same thing you're
22 shocked that I would do, but you seem to like their
23 recommendation. They would seem to be willing to
24 tolerate that same risk for a couple of elections in
25 order to move you toward both a fair and safe election

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1 system.

2 SEN. WILLIAMS: You know, I think it is
3 a balancing act. And although there is a lot you've
4 said tonight that I don't agree with, I do agree with
5 that one point. And, you know, they go on to say in
6 this same Supreme Court opinion that I quoted from
7 earlier that the severity of the burden, of course, is
8 mitigated by the fact that if eligible voters without
9 photo identification may cast provisional ballots that
10 will be ultimately counted, it's unlikely that such a
11 requirement would pose a constitutional problem unless
12 it's wholly unjustifiable. And even assuming that the
13 burden may not be justified as to a few voters, the
14 conclusion is by no means sufficient to establish the
15 Petitioner's right to relief they seek in this
16 litigation.

17 And so it seems to me that the Court
18 directly addressed that balancing act that you're
19 talking about between the risk of disenfranchising
20 people, which none of us want to do on this floor, and
21 the risk of having an election stolen by false voting,
22 voter impersonation or other things that may go on.

23 And I don't know. Maybe you don't
24 realize that this bill that we're considering
25 contains -- you know, we already have in state law

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1 provisional voting requirements that are consistent
2 with the HAVA requirements. So there is no instance
3 where someone would not be able to go in and cast a
4 ballot under this bill. Are you aware of that?

5 DR. MOORE: But if the person didn't
6 have ID, what would happen to their provisional ballot
7 after they cast it?

8 SEN. WILLIAMS: Well, and I think we'll
9 have the Secretary of State testify about that. It's
10 a process where there is a determination made by the
11 election judge whether that person was who they said
12 they were or not. And there is actually a process
13 that all of us voted for. All 31 of us voted for our
14 provisional voting process that we have here in Texas,
15 and it's been cleared through the Department of
16 Justice. So that provisional voting that we have in
17 Texas is cleared by DOJ. It meets the Section 5
18 requirements, and everybody in this chamber voted for
19 it.

20 DR. MOORE: Well, I mean, but that's
21 under a different ID regime. Is that right? I mean,
22 what was pre-cleared was --

23 SEN. WILLIAMS: Under our current ID
24 regime. But the provisional voting -- the law on
25 provisional voting doesn't change under this bill. So

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1 whoever goes to vote will still be able to cast a
2 provisional ballot and then an election judge, the
3 appropriate official -- I need to let the Secretary of
4 State speak to it, because I don't want to -- I might
5 not have the specific terms correct. But there is a
6 process that has been cleared that we use to determine
7 whether that's an eligible vote. That's under current
8 law. That process isn't touched top or bottom by
9 this. At worst, at the worst, you might have a few
10 more provisional ballots.

11 DR. MOORE: I'm not understanding how
12 you change the IDs that are required without changing
13 the provisional ballot system.

14 SEN. WILLIAMS: Well, I would suggest
15 you read our bill and then you would understand it.

16 DR. MOORE: Well, I did read the bill.
17 Maybe I need to talk to the Secretary of State's
18 office to get a better understanding of that.

19 SEN. WILLIAMS: Right. Okay. And then
20 finally, a couple of other things that I wanted to
21 just point out. You commented with Sen. Van de Putte
22 extensively about voter education and how important
23 that was. And, you know, the way this fiscal note
24 process works here in our state, there is a careful
25 look at an independent non- -- independent

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1 non-partisan group, the Legislative Budget Board, they
2 work for every one of us here, and they make a
3 determination.

4 And when I went back and looked at this
5 bill, you know, the reason there's no cost here is,
6 this bill doesn't address voter education, and so
7 there would be no additional expense. However, what
8 you may not know is that the Secretary of State
9 already has a line item in their budget for voter
10 education. I'm working to get that number for us now.
11 We don't know -- I can't tell you off the top of my
12 head what it is. But it's not as if the state is not
13 already spending money on voter education. Were you
14 aware of that?

15 DR. MOORE: I would have assumed that
16 you were already spending money on voter education.

17 SEN. WILLIAMS: Okay. And so what I
18 think we're going to hear in testimony from the
19 Secretary of State is that they can absorb the cost of
20 this in their existing budget.

21 Thank you.

22 SEN. DUNCAN: The Chair recognizes
23 Sen. Gallegos.

24 SEN. GALLEGOS: Thank you, Mr. Chairman.
25 Dr. Moore, I have a couple of questions,

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1 kind of like in the line of questions that Sen. Van de
2 Putte gave you. I do want to, at the proper time,
3 Mr. Chairman, submit the map I'm fixing to talk about
4 as an example. And I've got a copy for all the
5 members.

6 SEN. DUNCAN: Why don't you go ahead and
7 send it up now and let's mark it so we'll have a
8 proper reference in the record.

9 SEN. GALLEGOS: Give one to Dr. Moore.

10 SEN. DUNCAN: Exhibit 22 is a map
11 submitted by Sen. Gallegos. It will be submitted into
12 the record.

13 (Exhibit No. 22 marked and admitted)

14 SEN. DUNCAN: Senator, you can ask your
15 questions.

16 SEN. GALLEGOS: Okay. Thank you,
17 Mr. Chairman.

18 Dr. Moore, the data that I'm passing
19 out -- and I will relate to two other maps, because
20 the one from Houston will suffice. That's my
21 hometown. And the data is from the Texas Department
22 of Public Safety, shows that in my home city of
23 Houston, it is very -- under this bill, Dr. Moore,
24 that if you look -- members, if you look at the map,
25 there is no DPS center inside the 610 loop, and the

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1 same is for Fort Worth.

2 Sen. Davis, there is none inside the 610
3 loop in Fort Worth.

4 And, Sen. West, there's only one in the
5 City of Dallas, a DPS center.

6 What my question is to you, Dr. Moore,
7 if we pass this legislation that mandates that every
8 Texan that wants to vote get a photo ID, that if you
9 look at the map, especially the City of Houston -- or
10 the Houston map -- that most of these folks that
11 probably are going to have to have voter ID are
12 minorities, live inside the 610 loop, socioeconomic
13 welfare is low. They'll probably have no methods of
14 transportation and depend on public transportation to
15 move around.

16 If we pass the bill, as what you see on
17 that map that I just gave you, Dr. Moore, and the
18 other cities that I described, which inside those 610
19 loops, the majority of the population is minority in
20 those cities. In looking at preliminary numbers that
21 I've already gotten on total population, in the last
22 10 years, in Houston, Texas, from 2000 to upcoming
23 2010 when the census is taken, just in Houston alone
24 the preliminary numbers are 1.1 million in the last 10
25 years, the majority of those Latino, in Houston -- in

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1 Houston.

2 So with that in mind, Dr. Moore, what I
3 would like to ask you is, do you believe that if
4 there's no DPS centers, were this bill by Sen. Fraser,
5 if there's no DPS centers in that 610 loop, that that
6 will become a hardship -- if the state mandates for a
7 photo ID and I, living inside the loop, without a car,
8 public transportation only, it's going to create a
9 hardship for me to get to that DPS center, especially
10 if there's none inside the 610 loop in Houston, in
11 Fort Worth, only one in Dallas, Texas. And that's
12 going to create a hardship for me as living inside the
13 city, low income, try to catch public transportation
14 and at least try to get to one of these that are
15 outside the loop. Let me ask you, in your
16 professional opinion, Dr. Moore, do you consider that
17 a hardship for those people living in there if we pass
18 this piece of legislation, that creates a hardship on
19 these people?

20 DR. MOORE: I'll answer in this way:
21 The Justice Department has a very sophisticated
22 geographic information system with all the census data
23 loaded into it, because of the redistricting work.
24 And it's a very simple matter to sit down and, within
25 15 minutes, create buffers around each of these points

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1 and calculate the minority population and how much of
2 the minority population lives within one mile or
3 10 miles or whatever.

4 Those numbers were a serious detriment
5 to Georgia in 2005, where Georgia didn't have
6 Department of Motor Vehicle offices in many counties
7 or in the City of Atlanta. It was a problem for the
8 federal judge who struck down Georgia's law, and I
9 think it's something that's going to take close
10 analysis to determine the differential impact that is
11 certainly going to be a red flag and something the
12 Department of Justice is going to look at very
13 closely.

14 SEN. GALLEGOS: Okay. So the answer is
15 yes on -- let's say a potential hardship for those
16 folks in there if we mandate every Texan to get a
17 photo ID that wants to vote?

18 DR. MOORE: Lack of access to the places
19 to go to get that ID will be seen as a hardship on
20 minority voters, who tend to be poor, tend to have
21 less access to transportation.

22 SEN. GALLEGOS: Thank you, Dr. Moore.

23 SEN. DUNCAN: Sen. Shapleigh.

24 SEN. SHAPLEIGH: Thank you, Mr. Chair.
25 Toby, in your testimony I think you're

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1 the only witness who to date has come forward to give
2 us a number. And what you're saying is that
3 approximately 162,901 registered voters in the 2008
4 election in Texas would have lacked a
5 government-issued photo. And I think your testimony
6 is, this is the minimum number and almost surely
7 under-estimates that population. Give us the range.
8 What would be the outside number?

9 DR. MOORE: Well, the Carter-Baker study
10 survey looked at Indiana, Mississippi and Maryland and
11 found that the number of people without ID varied from
12 I think 0.2 percent, or very little in Indiana, up to
13 close to 4 percent, I believe, in Maryland. I will
14 have to go back and look. So there was a range there
15 of states. The average of all the people they
16 surveyed, all 2,000 voters, was 1.2 percent, and
17 that's percentage I apply.

18 However, because that number includes
19 Indiana, which has a very high rate of ID ownership,
20 there is reason to believe that the number would be
21 higher than the 1.2 percent in Texas. But I would
22 only have confidence in saying that as a minimum, that
23 162,901, based on the AU survey.

24 SEN. SHAPLEIGH: But you can't offer an
25 opinion as to a number? When you look at the

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1 demographic breakdown of Texas -- and here you're
2 saying African-Americans are four times more likely
3 than whites to lack a photo ID -- 88 percent of those
4 without a photo ID had household incomes below \$25,000
5 a year. In my own community, I think something like
6 73 percent of the population makes less than \$35,000 a
7 year by household.

8 So is there a formula, is there a way
9 that you can look at the demographics of the 2003
10 census, extrapolate the 2008 and say this is your high
11 number with respect to the number of folks that are
12 going to lack a photo ID in Texas?

13 DR. MOORE: Well, it always scares me a
14 little bit when I hear people use the word
15 "extrapolate." I think I'll stick with my
16 conservative low threshold, knowing that it's probably
17 higher, could be considerably higher. But until
18 somebody does the analysis, does the survey work,
19 there is no way to know.

20 SEN. SHAPLEIGH: Okay. Now, you are the
21 only witness that was part of the Carter-Baker
22 Commission. From your testimony, I think you were the
23 Project Director. Is that correct?

24 DR. MOORE: I was Project Manager after
25 the release of the study. So I managed the follow-up

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1 work.

2 SEN. SHAPLEIGH: And you've also served
3 for six years as the geographer of the Voting Section
4 of the Civil Rights Division? In connection with that
5 service, in connection with your professional
6 expertise, do you have a number with respect to
7 Hispanics? I notice that you've opined here as to
8 African-Americans, how many lack a photo ID. We've
9 talked about women; we've talked about folks making
10 less than \$25,000 a year. What is that number for
11 Hispanics?

12 DR. MOORE: Hispanics are a very
13 difficult group to survey, especially impoverished
14 Hispanics who may not have landlines. They're hard to
15 reach. There are language difficulties. I don't know
16 of any kind of full-fledged scientifically credible
17 survey that would allow you to get at that number,
18 because from what we know of ID ownership and how it
19 correlates with low incomes, we would expect that
20 number to be considerably higher for Hispanics than
21 for other groups.

22 On the other hand, Hispanic citizens may
23 have higher levels of documentation, because they need
24 to prove their citizenship where they have gone
25 through the naturalization. There are a lot of

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1 variables in that. But we just don't know for
2 Hispanics how many people don't have an ID.

3 SEN. SHAPLEIGH: Are you familiar with
4 the Texas colonias?

5 DR. MOORE: Very little.

6 SEN. GALLEGOS: Thank you.

7 SEN. DUNCAN: Thank you, Dr. Moore.

8 There are no other witnesses or members
9 queued up, so you are excused.

10 The next witness is Dr. Frank
11 Strickland.

12 Dr. Strickland, you will approach, state
13 your name and who you represent. Turn your testimony
14 over to the -- written testimony, if any.

15 Do we have that?

16 I'll go ahead and introduce that as
17 Exhibit 23, would be the testimony of Frank B.
18 Strickland.

19 (Exhibit No. 23 marked and admitted)

20 SEN. DUNCAN: State your name, please,
21 and who you represent. You have 10 minutes.

22 **TESTIMONY BY FRANK B. STRICKLAND**

23 MR. STRICKLAND: Thank you,
24 Mr. Chairman. And, by the way, it's not
25 Dr. Strickland.

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1 Sen. Duncan and members of the Senate,
2 my name is Frank Strickland. I'm a partner in the law
3 firm of Strickland Brockington Lewis in Atlanta,
4 Georgia, a firm which, together with its predecessors,
5 dates back to 1971. My experience with elections
6 comes primarily from two sources: Serving as a member
7 of the election board for the largest county in
8 Georgia and litigating various election and other
9 political cases over a period of many years.

10 Although I am not here in an official
11 capacity, I'm one of five members of the Fulton County
12 Board of Registration and Elections which is a
13 bipartisan board appointed by the Board of
14 Commissioners of Fulton County, which has general
15 supervision over all voter registration and election
16 processes in Georgia's largest county. I previously
17 served on the Election Board from 1971 to 1977.
18 Substantially all of the City of Atlanta is located in
19 Fulton County.

20 The Election Board is independent in
21 that it does not report to the Board of Commissioners,
22 and its decisions on registration and election matters
23 in Fulton County, including the appointment of the
24 department director, are final. Fulton County is
25 Georgia's largest county, with a population of

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1 approximately 850,000. And there are approximately
2 552,000 registered voters in the county.

3 In 2005 Georgia first adopted a law
4 requiring a form of photo identification when voting.
5 A substantial number of persons over age 18 already
6 had a Georgia driver's license, which is one of the
7 acceptable forms of identification. The 2005 statute
8 provided for issuance of a state voter ID for a
9 nominal fee to persons who did not have a driver's
10 license or other acceptable form of photo ID, such as
11 a government employment ID card, voter ID card, United
12 States military ID card, tribal ID card or a United
13 States passport.

14 As a result of federal court litigation
15 before United States District Judge Harold Murphy in
16 Rome, Georgia, the law was changed in 2006 to provide
17 for the issuance of a free photo ID card at any
18 registrar's office in one of Georgia's 159 counties.

19 Notwithstanding the availability of a
20 free photo ID to anyone who did not have another
21 acceptable form of identification, the 2006 statute
22 was also litigated before Judge Murphy in a case
23 entitled Common Cause vs. Billups which is found at
24 504 F.Supp. 1333. Judge Murphy was a Carter appointee
25 to the federal bench, and he recognized the state's

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1 interest in passing a photo identification law to
2 prevent fraud when he said -- and I quote --
3 "Additionally, Plaintiffs have failed to demonstrate
4 that the Photo ID requirement is not reasonably
5 related to the state's interest in preventing fraud in
6 voting."

7 Other plaintiffs filed suit in state
8 courts to challenge the photo ID statute under state
9 law. These efforts were also unsuccessful after
10 appeal to the Supreme Court of Georgia.

11 In addition to arguing that in-person
12 voter fraud does not occur and remedies like voter
13 identification laws are unnecessary, opponents of
14 photo identification requirements have long argued --
15 quite vocally and emphatically -- that these laws
16 would lead to disenfranchisement of, in Georgia's
17 case, hundreds of thousands of voters. But when the
18 State of Georgia finally had its day in court, it
19 became clear that emotional and hyperbolic arguments
20 used to argue against the state's photo identification
21 law were simply empty rhetoric.

22 Judge Murphy also addressed this
23 argument in his decision for the state -- and I
24 quote -- "As the Rekita court noted, voters who lack
25 Photo ID undoubtedly exist somewhere, but the fact

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1 that Plaintiffs, in spite of their efforts, have
2 failed to uncover anyone 'who can attest to the fact
3 that he/she will be prevented from voting' provides
4 significant support for a conclusion that the Photo ID
5 requirement does not unduly burden the right to vote."

6 Judge Murphy further stated, quote,
7 "Plaintiffs have failed to produce any evidence of any
8 individual ... who would undergo any appreciable
9 hardship to obtain photo identification in order to be
10 qualified to vote."

11 The plaintiffs' inability to produce a
12 single voter who would be adversely impacted by the
13 law was important to Judge Murphy's determination that
14 there was no significant burden posed by the photo ID
15 law and should also be a very important consideration
16 for the Texas Senate.

17 Of the two individual plaintiffs named
18 in the Common Cause case, one individual testified
19 that she didn't mind getting a photo identification
20 and she didn't think it would be hard to get one. The
21 other Plaintiff said that he thought he could get a
22 photo ID and it would probably help him a lot.
23 Interestingly, the same lawyers who argued that
24 Plaintiff simply could not find a way to travel seven
25 miles to his registrar's office to get a photo ID also

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1 drove that Plaintiff nearly 200 miles to testify at
2 trial, traveling past many locations where he could
3 have obtained a free photo ID on the way to the trial.

4 Likewise, the other witnesses relied
5 upon by the lawyers for the Plaintiff to establish
6 that obtaining a photo ID was too burdensome
7 ultimately agreed that, in fact, they were perfectly
8 capable of obtaining the ID. One woman who signed an
9 affidavit prepared by the Plaintiff's counsel
10 asserting that it was too far to go to the county
11 courthouse to get a photo ID from the registrar,
12 freely admitted on her deposition that she regularly
13 traveled to the courthouse and could pick up an ID the
14 next time she was there.

15 Another witness who also gave an
16 affidavit that he would have a hard time obtaining a
17 photo ID testified differently on deposition. When
18 asked if he thought he could get a ride to the
19 registrar's office to get a photo ID, he replied that
20 he didn't need a ride and he could get one any time,
21 because the registrar's office was within walking
22 distance of his home.

23 Judge Murphy's decision in the Common
24 Cause case, which is found at 554 F.3d 1340 -- I beg
25 your pardon. This is the Court of Appeals decision --

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1 it was upheld on January 14, 2009, in a unanimous
2 opinion of a three-judge panel of the United States
3 Court of Appeals for the 11th circuit. The Court
4 stated -- and I quote -- "We conclude, based on the
5 [evidence] in Crawford v. Marion County Election
6 Board . . . which upheld a similar law in Indiana,
7 that the burden imposed by the requirement of photo
8 identification is outweighed by the interest of
9 Georgia in safeguarding their right to vote."

10 The Plaintiffs have filed a petition for
11 certiorari. But because the Crawford case is really
12 on all fours with Georgia's case -- except Georgia's
13 law was deemed less strict by Justice Kennedy -- a
14 grant of that petition application for cert is
15 unlikely.

16 After Judge Murphy's September 2007
17 decision upholding the photo ID law, Georgia held
18 numerous elections during 2007 and 2008. In
19 November 2007, more than 100 Georgia counties and
20 municipalities held elections with the photo
21 identification law in place. Every one of these
22 elections occurred without incident or legal challenge
23 related to the photo ID requirement. In July 2008,
24 partisan primaries were held with a large turnout; and
25 again, no problems related to photo ID.

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1 Most importantly, in the 2008 General
2 Election, with the highest turnout ever seen in
3 Georgia -- more than 3.9 million voters -- the photo
4 ID law posed no problem. That fact is particularly
5 important because of the 3.9 million votes cast, 92
6 percent were cast in person, meaning that the voter
7 had to show a proper form of photo ID. Again, no
8 problems. Although the turnout was much lighter for
9 the December 2nd runoff, the fact remained constant
10 that the photo ID requirement did not result in any
11 disenfranchisement statewide.

12 From the perspective of an elections
13 administration official in Fulton County, I can also
14 say without hesitation that countywide, the photo ID
15 requirement did not result in the mass
16 disenfranchisement its opponent predicted. The
17 requirement did not result in any disenfranchisement
18 at all.

19 Focusing on the general election in
20 November 2008, the voter turnout was 405,000 out of
21 552,000 registered voters, which is a turnout of
22 approximately 73 percent, a record for Fulton County,
23 both in terms of the number of registered voters and
24 voter turnout. Only 93 voters did not have an
25 acceptable form of photo ID. Each voter was given a

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1 provisional ballot and, in accordance with the
2 statute, was instructed to present a valid photo ID
3 within 48 hours. While only one did so, there is no
4 way to know why the others did not.

5 SEN. DUNCAN: Mr. Strickland, your time
6 has expired.

7 MR. STRICKLAND: All right, sir.

8 SEN. DUNCAN: We have Sen. Watson.

9 **QUESTION FROM SENATE FLOOR**

10 SEN. WATSON: Welcome to Texas.

11 MR. STRICKLAND: Thank you, sir.

12 SEN. WATSON: I appreciate your being
13 here. I just have one thing I want to ask you about.
14 You didn't bring any information or statistics or
15 anything at all related to Texas and the impact that
16 this proposed bill would have on African-Americans or
17 Hispanics or people that don't speak English, anything
18 like that, did you?

19 MR. STRICKLAND: Nothing having to do
20 with Texas, no, sir.

21 SEN. WATSON: Thank you very much for
22 being here.

23 SEN. DUNCAN: Sen. Williams.

24 SEN. WILLIAMS: Thank you.

25 Mr. Chairman.

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1 Mr. Strickland, you have -- I don't know
2 if you got to it in your remarks, because the time
3 expired, but I did read your written testimony. And
4 you make three points at the end of your report, and
5 one is that you talk about how important an
6 educational program is when any photo ID law is put
7 into place.

8 And I just wanted to share with you some
9 of the things that we're doing in Texas through the
10 Secretary of State's office that have to do with voter
11 education and the kinds of things that we could easily
12 incorporate any change in the election law into these
13 sorts of things and see if this was the soar of thing
14 you were referring to.

15 In television and radio ads, we have
16 three different 60-second spots in English. "High
17 Tech", "Special Needs" and "New Voter" are the titles
18 of those. I'm not going to play them for the
19 committee, but they're available on the Secretary of
20 State's website in Spanish. We also have three
21 60-second radio spots: A father-daughter, a special
22 needs voting radio spot and a man on the street.

23 In addition, we have one, two, three,
24 four, five -- six English version television spots and
25 four Spanish version 15-second spots: "Learn How to

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1 Vote," "Special Needs Voters," "Voting Machines,"
2 "Register By," the Secretary of State saying, "You can
3 vote," "Learn How to Vote," "Vote in Spanish" and
4 "Register By" and then the "You Can Vote," also those
5 last four in Spanish so that we have the same ad
6 sometimes in English and Spanish.

7 And then we also have on that same
8 website, you know, a number of links -- Voter Facts.
9 Where Do I Vote? What's my District? How Do I Vote
10 Early? -- that sort of thing that is on the Secretary
11 of State's website. Are those just generally --
12 without getting too specific, because our states are
13 different -- generally speaking, are those the kinds
14 of voter education projects that you ran in your
15 state?

16 MR. STRICKLAND: Yes. And I would say
17 that the program you just outlined goes considerably
18 beyond what was done in Georgia.

19 SEN. WILLIAMS: Is that right? Now, one
20 other thing that you mentioned in your remarks that I
21 wanted to follow up on -- give me just a second. It's
22 also near the end of your remarks.

23 And beginning on Page 6, at the very
24 last line, you say, "While critics of the photo ID law
25 contend that it will be administered in a racially

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1 discriminatory fashion, there is absolutely no support
2 for that allegation, just as there is no support for
3 the notion that requiring a photo ID is
4 unconstitutionally burdensome."

5 Are you familiar with the Crawford vs
6 Marion County Supreme Court case?

7 MR. STRICKLAND: Yes, generally
8 speaking.

9 SEN. WILLIAMS: Okay. And I believe --
10 well, I know. I've got a copy of the case here. And
11 then the Supreme Court said about this very issue, "A
12 photo identification requirement imposes some burdens
13 on voters that other methods of identification do not
14 share. For example, a voter may lose his photo
15 identification, may have his wallet stolen on the way
16 to the polls, or may not resemble the photo in the
17 identification because he [has] recently [grown] a
18 beard," all things that we've heard these sorts of
19 problems on the floor today.

20 But the Supreme Court concluded, as you
21 did in your remarks, that "Burdens of that sort
22 arising from life's vagaries, however, are neither so
23 serious nor so frequent as to raise any question about
24 the constitutionality . . .; the availability of the
25 right to cast a provisional ballot provides an

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1 adequate remedy for problems of that character."

2 And I believe you say in your remarks
3 that you have that same kind of provisional voting in
4 the Georgia law. Would you describe for the committee
5 briefly what that entails.

6 MR. STRICKLAND: Yes, sir. It's a
7 48-hour requirement. In other words, if the voter,
8 using one of the hypotheticals that you presented, has
9 a difficulty that you outlined, then that person is
10 instructed by the poll worker to return to a
11 registrar's office within 48 hours to validate his or
12 her identification.

13 SEN. WILLIAMS: And Fulton County is the
14 most populous county in the State of Georgia. And how
15 many people have you had come back to -- that have
16 been challenged -- first of all, how many people have
17 been challenged on that? And then I'm curious how
18 many have actually come back.

19 MR. STRICKLAND: Out of the statistics I
20 presented a moment ago, with well over 400,000 voters,
21 there were 93 people who did not have a photo ID.
22 Each was instructed to present a photo ID within 48
23 hours. Only one did.

24 SEN. WILLIAMS: Okay.

25 MR. STRICKLAND: As a follow-up to that,

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1 each person who did not appear was sent a letter
2 reminding that voter of the process and of the photo
3 ID requirement.

4 SEN. WILLIAMS: Now, our provisional
5 voting that we have here in Texas does not require the
6 voter to come back so that their vote may be counted.
7 Wouldn't you think that would be even less burdensome
8 than what you have in Georgia?

9 MR. STRICKLAND: No question.

10 SEN. WILLIAMS: And then we also, under
11 the provisions of this bill, allow alternative forms
12 of identification that would include government
13 documents and official papers -- I don't want to go
14 through the whole list, because it's so late -- but
15 one photo ID or two of any of the following, a laundry
16 list, do you think that also would relieve the burden
17 from some of those folks that might not have a photo
18 ID? Would it make it less burdensome?

19 MR. STRICKLAND: Less burdensome. It is
20 less stringent than the Georgia law or the Indiana
21 law.

22 SEN. WILLIAMS: Okay. Thank you so
23 much. I appreciate you being here with us tonight.

24 MR. STRICKLAND: Thank you, sir. By the
25 way, the president pro tem of the Georgia Senate is

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1 Tommy Williams.

2 SEN. WILLIAMS: Yes. I run in to him
3 all the time at conferences and see his name on the
4 Internet. We spell our first name differently,
5 though.

6 MR. STRICKLAND: I noticed that.

7 SEN. WILLIAMS: He's an "ie," and I'm a
8 "y."

9 SEN. WHITMIRE: Mr. President, Chairman?

10 SEN. DUNCAN: Sen. Whitmire. State your
11 purpose.

12 SEN. WHITMIRE: Mr. Strickland, on Page
13 6 --

14 SEN. DUNCAN: Well, hold a minute. I
15 think you're out of order. I'm sorry, Senator.
16 You're not -- I thought you had an inquiry.

17 SEN. WHITMIRE: Oh, no. I'm sorry.

18 SEN. DUNCAN: Sen. Ogden is next in
19 line. I'm sorry.

20 SEN. OGDEN: I yield to Sen. Whitmire.

21 SEN. DUNCAN: Senator Whitmire.

22 SEN. WHITMIRE: The education component
23 you emphasize is so important, and on Page 6 you give
24 great credit to the Georgia Secretary of State, her
25 staff and the members of the State Election Board.

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1 Could you tell us what the entity, the State Election
2 Board, consists of, how they're chosen and what are
3 their responsibilities?

4 MR. STRICKLAND: The State Election
5 Board is appointed by the Governor, and the Secretary
6 of State is the Chairman of that board. And in
7 general, they do not run the elections as such.
8 They're more of a review body for problems in
9 connection with the election.

10 The elections are run, as I'm sure is
11 the case in -- as far as I know is the case in Texas,
12 by the county election boards --

13 SEN. WHITMIRE: You also mentioned your
14 county election officials. Would it impact your
15 judgment, what you're here speaking and recommending
16 for Texas, to know that we do not have such an entity,
17 we do not have a state election board, which you said
18 played a vital role in the education of your voters?

19 MR. STRICKLAND: I think the role of the
20 Secretary of State was considerably more important
21 than the State Election Board. I just included them
22 in the list of persons who were involved. But our
23 Secretary of State, Karen Handel, really stepped out
24 and took a leadership role. And I would say the State
25 Election Board --

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1 SEN. WHITMIRE: Do you have an
2 approximate --

3 MR. STRICKLAND: -- incidental.

4 SEN. WHITMIRE: Do you have an
5 approximate what your budget was to carry out this
6 educational process that you speak of?

7 MR. STRICKLAND: The number that I
8 recall -- and I was not directly involved in that --
9 is around \$600,000. Now, the director of our
10 Elections Division is a witness that will testify
11 later here and give you the number.

12 SEN. WHITMIRE: Of course, you obviously
13 realize Texas would be much larger and it would be
14 logical to assume it would be probably several times
15 that cost?

16 MR. STRICKLAND: I would assume that to
17 be the case.

18 SEN. WHITMIRE: And my colleague was
19 referencing that we have spots prepared. I was
20 anxious to ask him -- you know, it's great that we
21 have the spots. But, obviously, we have to have the
22 budget and the implementation to make that redundant
23 enough. Like any other campaign, the voters are going
24 to have to hear that numerous times. I do not
25 believe, looking at our Secretary of State's budget,

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1 that that is accounted for.

2 SEN. WILLIAMS: I'll put it in.

3 SEN. WHITMIRE: Beg your pardon?

4 SEN. WILLIAMS: I'll put it in.

5 SEN. WHITMIRE: You will put it in the
6 budget? Well, I'm sure we will have a chance to
7 discuss that. In fact, I'm going to yield to our
8 Chairman of Finance.

9 I appreciate you being here and I know
10 you mean well. I just pause because I think Georgia
11 is a fine state. And we're just so much more diverse,
12 larger and in some instances maybe more complicated
13 than you. So I look forward to my colleagues telling
14 me what we're going to do with all of those spots. If
15 they remain in the can and do not have the proper
16 budget, I don't think they will ever be nearly as
17 successful as you speak of in Georgia.

18 SEN. DUNCAN: Sen. Ogden.

19 SEN. OGDEN: Mr. Strickland, thank you.

20 Sen. Williams alluded to this, and I
21 want to go back to a question that Sen. Watson asked a
22 minute ago. And I may ask -- if I get the question
23 incorrect, I would ask Sen. Watson to correct me. But
24 I think he asked if, in your testimony, you said
25 anything about the potential for ethnic discrimination

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1 in Texas, I think was his question.

2 Is that right?

3 MR. STRICKLAND: That's pretty close.

4 SEN. OGDEN: And your answer was "No"?

5 MR. STRICKLAND: Correct.

6 SEN. OGDEN: But I would at least like
7 to say -- and I would like you to comment on this --
8 is that in your written testimony you basically
9 address that issue from a Georgia perspective. And on
10 Page 6, you say that, "From time to time, the argument
11 has been made that no matter how much election
12 officials and poll workers are educated on the topic,
13 the requirement will be administered in a racially
14 discriminatory fashion. That argument is a red
15 herring," and I would like you to amplify that,
16 please.

17 MR. STRICKLAND: Well, the example I
18 gave in my testimony -- and I may have run out of time
19 before I got to it -- was the election Board with
20 which I'm involved in Fulton County, which is a
21 racially diverse county. And, as I said, we have a
22 bipartisan board and our board appoints the director
23 of the department.

24 And for a number of years, that person
25 has been an African-American woman, and that's the

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1 case today. And what I said was that approximately
2 95 percent of the full-time Election Department staff
3 is African-American. And also that during our primary
4 general elections, the demographics of the poll
5 workers is in excess of 50 percent African-American.
6 So I took the position that it simply does not make
7 sense that that group of people is going to
8 discriminate against minority voters.

9 SEN. OGDEN: Okay. Thank you.

10 SEN. DUNCAN: Sen. Ellis.

11 SEN. ELLIS: Thank you, Mr. Strickland;
12 thank you for being here.

13 Briefly, you mentioned some 89 or 75
14 provisional ballots, I think. I can't remember the
15 number.

16 MR. STRICKLAND: 93.

17 SEN. ELLIS: 93 that were --

18 MR. STRICKLAND: What I said was, there
19 were 93 persons out of over 400,000 in Fulton County
20 that did not have an acceptable form of photo ID.

21 SEN. ELLIS: And you said under your
22 statute in Georgia, they have 48 hours --

23 MR. STRICKLAND: Correct.

24 SEN. ELLIS: -- to bring something to
25 prove they are that person, only one person came in?

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1 MR. STRICKLAND: Right.

2 SEN. ELLIS: Okay. Now, in your statute
3 it lays out the process, unlike -- although I know you
4 have not read it -- the Texas statute is quiet on
5 that, the bill that he has here. Now, out of the ones
6 that didn't come in, does anyone go do an analysis if
7 part of the rationale behind the statute in Georgia is
8 to deal with the issue of voter fraud, did anybody go
9 and check, someone go and check and see what was up
10 with the ones who did not come back and prove they
11 were who they said they were when they voted?

12 MR. STRICKLAND: Not to my knowledge.
13 As I mentioned a moment ago, a follow-up letter was
14 sent to the people; that is, the 92 that did not
15 return.

16 SEN. ELLIS: Yes. And only 92 out of
17 400,000 in Fulton County voting may not seem like a
18 lot, but -- my mother-in-law lives in Atlanta -- if
19 there is a close legislative race or Senate race or
20 city council race, as we had here. We had one
21 election for a House seat -- they have been enlarging
22 House seats in Georgia, about 150,000 people per House
23 seat -- it could determine whether or not someone won.
24 Does anybody do an analysis to see the ethnic or
25 racial makeup of those folks who did the provisional

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1 ballot but didn't show up to prove they were who they
2 said they were?

3 MR. STRICKLAND: I don't know the answer
4 to that, Senator. I'm sorry.

5 SEN. OGDEN: Okay. Thank you for
6 coming.

7 MR. STRICKLAND: Thank you, sir.

8 SEN. DUNCAN: Sen. Hinojosa.

9 SEN. HINOJOSA: Thank you, Mr. Chairman.

10 Mr. Strickland, I think Sen. Williams
11 was asking you a question concerning the educational
12 programs by your Secretary of State, and you mentioned
13 that they were using websites. And you said you
14 really didn't know the cost of a training program, so
15 educational programs. Do you know they provided
16 computers for people who could not afford computers?

17 MR. STRICKLAND: I don't.

18 SEN. HINOJOSA: Also I guess in the
19 State of Georgia, do you have poll watchers?

20 MR. STRICKLAND: Poll watchers?

21 SEN. HINOJOSA: Yes, who they show the
22 voter ID to?

23 MR. STRICKLAND: Oh, they show that
24 to -- when you walk in the polling place, you sign a
25 voter certificate, indicating your name, your address,

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1 and you say you're eligible to vote in that election.
2 That begins the voting process.

3 And in my own polling place, at that
4 particular step I'm asked to produce a photo ID. And
5 that really carries over to the -- we have a device
6 called an express poll. It's a little touch screen
7 device that verifies that -- in other words, if I
8 present my voter certificate with my name on it, then
9 the poll worker who has seen my photo ID then punches
10 my name or the first two or three letters of my name
11 into the express poll machine, which is really the
12 database of registered voters, and confirms the fact
13 that I am a properly qualified voter to vote at that
14 precinct. So I'm showing the identification to the
15 poll worker, as distinguished from a poll watcher who
16 in Georgia would be a volunteer for each political
17 party who is observing the election but is not, in
18 fact, a poll official.

19 SEN. HINOJOSA: So I guess, are you
20 using a driver's license or some type of photo ID --

21 MR. STRICKLAND: Yes.

22 SEN. HINOJOSA: -- that has some type of
23 information on the back that can be scanned?

24 MR. STRICKLAND: Unfortunately, we do
25 not have the ability to scan. That would considerably

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1 increase the speed of processing. In other words,
2 we're using this thing that I describe as an express
3 poll. If we had the bar code on the back, it would be
4 a matter of zipping it through that device and
5 verifying it that way. It would be much faster than
6 the manual punching.

7 SEN. HINOJOSA: And do you know what the
8 cost would be of that express poll that you're using
9 in Georgia?

10 MR. STRICKLAND: The express poll
11 device? I don't know. We spent a lot of money to go
12 to the touch screen voting, and the express poll
13 machines were acquired at about the same time, at
14 considerable cost. And I do not recall the cost.

15 SEN. HINOJOSA: And do you have those
16 express polls in each precinct?

17 MR. STRICKLAND: Yes, several of them,
18 depending on the number of registered voters at that
19 precinct.

20 SEN. HINOJOSA: And you said the cost
21 was considerable. Do you know how much, a ballpark
22 figure?

23 MR. STRICKLAND: I cannot give you a
24 ballpark. I'm sorry.

25 SEN. HINOJOSA: So for us who want to do

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1 the same thing, even though it slows down the process,
2 would have to invest quite a bit of money in providing
3 the funds to the precincts in our state?

4 MR. STRICKLAND: Well, I think in every
5 polling place, there has to be some verification of
6 the voter being on the registered voters list for that
7 particular precinct. So this is a form of
8 verification. It happens to be computer-driven. But
9 as far as I know, in every polling place in every
10 state, there has to be verification that the voter is,
11 in fact, on the registered voters list.

12 SEN. HINOJOSA: Yes. And one of the
13 questions that I asked the author of this legislation
14 here is that we don't have a way to verify whether or
15 not the photo ID is fake or a bad one, because here in
16 Texas, you can go buy a fake photo ID at a flea
17 market.

18 MR. STRICKLAND: I'm not a computer
19 expert, but I would think the problem with a fake
20 photo ID would be the bar code.

21 SEN. HINOJOSA: And you're right, you're
22 exactly right, the bar code. But the problem is that
23 we're not using the type of equipment that you're
24 using in Georgia to verify whether or not that's a
25 valid ID. So that's a problem that we have in the

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1 present legislation, the way it's drafted.

2 MR. STRICKLAND: Yes. I think
3 verification is an important part of the process. And
4 I will take your word for it on how it's done in
5 Texas.

6 SEN. HINOJOSA: Thank you.

7 SEN. DUNCAN: Sen. Watson.

8 SEN. WATSON: Yes. Thank you,
9 Mr. Chairman.

10 I'm sorry. I thought I was done. But
11 since Chairman Ogden asked a question and called out
12 something related to what I had asked you, I thought I
13 need to follow up.

14 He pointed to a part of your testimony
15 on Page 6 where he specifically quoted language
16 regarding where you said that the requirement will be
17 administered in a -- it talks about the requirement
18 being administered in a racially discriminatory
19 fashion. And, of course, you go on to say that that
20 is a red herring and, frankly, nonsense, to use your
21 words.

22 So in that area, in answer to Chairman
23 Ogden's questions, you were talking about the
24 administration of it being done in a racially
25 discriminatory fashion. Is that correct?

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1 MR. STRICKLAND: What I meant to say,
2 the way the sentence is constructed, it really means
3 in a non-discriminatory fashion.

4 SEN. WATSON: Gottcha! But in any
5 event, it's talking about how it's administered.
6 Right?

7 MR. STRICKLAND: Yes.

8 SEN. WATSON: And, of course, you -- and
9 maybe you don't know. But are you aware that under
10 Section 5 of the federal Voting Rights Act, it isn't
11 just about whether it's administered in a
12 discriminatory fashion, it's whether or not it has the
13 purpose or effect. Are you familiar with that?

14 MR. STRICKLAND: I am familiar with
15 that.

16 SEN. WATSON: And when I ask you about
17 Texas and your familiarity with Texas, you wouldn't
18 know, for example, whether in Texas, in other things,
19 other issues related to voting, you wouldn't know
20 whether Texas has some history of folks removing the
21 names of eligible voters from the list of registered
22 voters where the poll list of precincts, in a way
23 where they would then not be allowed to vote, do you?

24 MR. STRICKLAND: I have no knowledge of
25 that.

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1 SEN. WATSON: You don't have any
2 knowledge about poll workers refusing to accept people
3 for voting, even though their acceptance might be
4 required?

5 MR. STRICKLAND: No knowledge of that.

6 SEN. WATSON: About whether people have
7 provided false information to voters about voting
8 procedures resulting in people failing to then go
9 ahead and vote?

10 MR. STRICKLAND: I'm not familiar with
11 that.

12 SEN. WATSON: Or anything like providing
13 false information about where a voting place is or
14 what day people might vote?

15 MR. STRICKLAND: I have not made a study
16 of Texas voting procedures.

17 SEN. WATSON: Okay. Now, although you
18 indicate that you don't believe that in Georgia the
19 requirement has been administered in a racially
20 discriminatory fashion, at least in your area of
21 Georgia, you are familiar with studies such as that
22 put out by the Brennan Center where it indicated that
23 in Georgia in 2007, in some local elections, some
24 limited turnout elections, there were voters' ballots
25 rejected because of the voter ID law, weren't you?

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1 MR. STRICKLAND: I'm not familiar with
2 the Brennan Center study, though.

3 SEN. WATSON: Okay. So you wouldn't
4 know whether, in that Brennan Center study, it also
5 pointed out in the 2008 presidential primary that
6 number of people that were -- ballots that were
7 rejected because of Georgia's voter ID law grew into
8 the hundreds, and you just wouldn't have any way of
9 knowing anything about that?

10 MR. STRICKLAND: As I said a moment ago,
11 I'm not familiar with the Brennan Center study.

12 SEN. WATSON: Okay. Fair enough. Since
13 we were talking about Texas a minute ago -- and I want
14 to be clear on what it was that I was asking questions
15 about that Sen. Ogden decided that he needed to ask
16 about, too. Let me ask this more specifically.

17 You're not here tonight able to provide
18 the folks that are going to vote on whether to
19 implement SB 362, which would put new requirements on
20 people in Texas trying to vote, you're not here
21 providing us with any sort of statistical analysis of
22 the effect -- administration or not, but of the effect
23 of that new requirement on African-Americans,
24 Hispanics, people making less than \$35,000 a year,
25 people who speak only Spanish or Vietnamese or senior

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1 citizens, anybody like that, are you?

2 MR. STRICKLAND: I can't comment on how
3 things would work in Texas. What I did try to say in
4 my testimony and otherwise is that a number of similar
5 arguments were made in Georgia, and we just simply
6 have not had that experience.

7 SEN. WATSON: And one of the
8 differences, of course, in Georgia versus Texas is,
9 Georgia's Hispanic population is what, about
10 7 percent?

11 MR. STRICKLAND: That sounds about
12 right.

13 SEN. WATSON: Do you know anything about
14 colonias in Texas?

15 MR. STRICKLAND: I do not.

16 SEN. WATSON: How many media markets are
17 there in Georgia?

18 MR. STRICKLAND: Well, there's one
19 gigantic market in the Atlanta area, and the others I
20 would consider submarkets. Perhaps a half dozen.

21 SEN. WATSON: All right. Do you know
22 whether that's different than in Texas?

23 MR. STRICKLAND: Well, I know Texas has
24 some much larger cities than our other cities in
25 Georgia besides Atlanta. I don't know the exact

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1 number of media markets, though.

2 SEN. WATSON: Well, I'll let you know
3 that it's quite a bit more media markets, and so it
4 might also make a big difference with regard to that
5 education requirement you talked about.

6 Appreciate your being here tonight.
7 Thank you very much.

8 MR. STRICKLAND: Thanks so much.

9 SEN. DUNCAN: The Chair recognizes
10 Sen. Uresti.

11 SEN. URESTI: Mr. Strickland, good
12 evening and welcome to Texas.

13 MR. STRICKLAND: Thank you, sir.

14 SEN. URESTI: Thank you for being here.
15 I know you've come a long way, and we do appreciate
16 your testimony.

17 Mr. Strickland, I just have a few
18 questions for you with regard to some of the comments
19 you mentioned earlier that I read in your written
20 testimony, specifically with regard to a couple of, I
21 believe, plaintiffs that you referenced. There were
22 two in particular that I think you indicated could
23 have obtained their photo ID. One was within seven
24 miles and I think was one within walking distance. Is
25 that correct, Mr. Strickland?

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1 MR. STRICKLAND: That's correct.

2 SEN. URESTI: And what I'm trying to do
3 is draw the distinction and to kind of follow on what
4 Dean Whitmire mentioned earlier, draw a distinction
5 between the different -- State of Georgia, which I
6 know is a beautiful state, and Texas, specifically
7 with regard to the geographical area that is included
8 in both the states.

9 Would you agree with me that distance
10 could become a barrier with regard to obtaining an
11 individual's photo ID?

12 MR. STRICKLAND: I suppose it's
13 possible. As I pointed out in my testimony, we don't
14 have as many counties as you do, but we are the second
15 largest in number of counties, with 159. So we have
16 159 locations where a free photo ID can be obtained if
17 people don't already have some form of photo ID.

18 SEN. URESTI: Well, and I think the
19 biggest distinction would be, though, even though you
20 have 159 counties and we have 254 counties, is the
21 fact that Georgia, although I believe is a large
22 state, compared to Texas is a much smaller state, I
23 looked up Fulton County, which I understand is
24 Georgia's largest county, and the square mileage for
25 Georgia (sic) County is 520 miles. Is that correct?

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1 MR. STRICKLAND: I'm sorry. I didn't
2 understand that question.

3 SEN. URESTI: The size of Georgia -- I
4 beg your pardon -- of Fulton County is 529 square
5 miles. Is that true?

6 MR. STRICKLAND: Yes, I believe that's
7 correct.

8 SEN. URESTI: And, in fact, the size of
9 Georgia, the State of Georgia, is 59,424 square miles.
10 Is that correct?

11 MR. STRICKLAND: Yes. It's the largest
12 state east of the Mississippi River.

13 SEN. URESTI: And the reason I point
14 that out -- and I don't know if you heard my testimony
15 earlier when I was talking to Sen. Fraser. And, in
16 fact, as a backdrop to my questions was the size of my
17 senatorial district, which is almost the size of the
18 State of Georgia. The size of my senatorial district
19 graphically is 55,000 square miles, and the size of
20 the State of Georgia is 59,424 miles. So you can
21 almost fit the State of Georgia into my senatorial
22 district.

23 And so I throw that out to again ask the
24 question: Do you believe, now knowing the size of
25 just my district and, of course, the size of Texas,

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1 would that be a challenge and, therefore, a barrier to
2 somebody obtaining a photo ID?

3 MR. STRICKLAND: I suppose it could be.
4 But it seems to me that most people at sometime or
5 other go to the population center where, at least in
6 Georgia, a free photo ID could be issued.

7 And as I think another witness
8 testified, in Georgia, the statistics were that there
9 were six and a half million driver's licenses in place
10 versus about 4,500,000 registered voters. So I think
11 that demonstrates that a substantial majority of
12 registered voters already had a form of photo ID; in
13 other words, this was not a new requirement, that
14 every voter in Georgia go out and obtain an entirely
15 different kind of photo ID. It didn't demonstrate
16 that 100 percent of registered voters had a photo ID,
17 just that in my view a substantial majority already
18 did.

19 SEN. URESTI: And I understand that,
20 Mr. Strickland, though your DPS offices, I assume, are
21 open Monday through Friday, 8:00 to 5:00?

22 MR. STRICKLAND: Well, we're not using
23 DPS offices; we're using the county voter registrar,
24 which keep normal business hours.

25 SEN. URESTI: Okay.

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1 MR. STRICKLAND: And most likely they're
2 in the county courthouse of the county.

3 SEN. URESTI: Would it concern you,
4 though, if, in my district at least, some of the
5 counties, they have their DPS offices only open one
6 day a month? Do you think that would be a barrier for
7 somebody obviously trying to obtain their photo ID?

8 MR. STRICKLAND: Well, it certainly
9 could be.

10 SEN. URESTI: Mr. Strickland, I
11 appreciate it, and thank you very much. And welcome
12 to Texas.

13 MR. STRICKLAND: Thank you, Senator.

14 SEN. DUNCAN: Thank you, Mr. Strickland.
15 There are no other members queued up to speak, so you
16 will be excused. Appreciate your testimony.

17 MR. STRICKLAND: Thank you, sir.

18 SEN. DUNCAN: The Chair calls Mr. Adam
19 Skaggs.

20 MR. SKAGGS: Thank you, Mr. Chairman.
21 Thank you, Senators, for giving me the opportunity to
22 speak with you today.

23 SEN. DUNCAN: Mr. Skaggs, if you would,
24 let me do a little housekeeping. I think we have
25 Exhibit 24, which is your written testimony. Is that

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1 correct?

2 MR. SKAGGS: Yes, sir.

3 SEN. DUNCAN: Okay. We'll go ahead and
4 put that in the record.

5 (Exhibit No. 24 marked and admitted)

6 SEN. DUNCAN: And then if you will state
7 your name and who you represent. You have 10 minutes.

8 **TESTIMONY BY ADAM SKAGGS**

9 MR. SKAGGS: Certainly. Thank you,
10 Mr. Chairman.

11 My name is Adam Skaggs. I am counsel at
12 the Brennan Center for Justice at NYU School of Law in
13 New York City. Brennan Center is a non-profit,
14 non-partisan public policy and legal advocacy
15 organization, and we focus on fundamental issues of
16 justice and democracy. Among other things, we promote
17 policies that ensure fair and accurate elections and
18 that maximize citizen participation in the electoral
19 process. Our work toward these goals has included
20 extensive research and the publication of studies and
21 reports, assistance to state and federal policymakers
22 and advice on electoral legislation and, when it's
23 become necessary, participation in litigation to
24 protect the fundamental right to vote.

25 As part of this work, we have paid

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1 particular attention to the debate over strict voter
2 identification policies. We've commissioned research
3 on the number of citizens who lack documentary proof
4 of identity, and we have participated as an amicus in
5 litigation over strict voter ID policies in Indiana,
6 Georgia, Arizona and Albuquerque, New Mexico.

7 A central part of these efforts has been
8 our research on allegations of voter fraud. We've
9 analyzed claims of rampant voter fraud in order to
10 distinguish unfounded and exaggerated tales of fraud
11 from reliable, verified claims of election misconduct.

12 We published the results of this
13 analysis in a monograph entitled "The Truth About
14 Voter Fraud," which compiles methodological flaws that
15 have led to allegations of voter fraud and debunks
16 baseless -- though often repeated -- reports of voter
17 fraud. In my testimony today, I want to share some of
18 our findings.

19 Our findings illustrate the SB 362 makes
20 little sense as a matter of policy, for three reasons.
21 First, SB 362 does not fix any notable problem that
22 Texans have experienced. Second, to bolster their
23 case, supporters of SB 362 cite a number of problems
24 that the bill would not correct and would not address,
25 and that misleads the public into thinking that the

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1 proposal would accomplish more than it ever possibly
2 could.

3 The last and perhaps the most important
4 reason that SB 362 is likely to create problems, the
5 problems it creates are going to be far worse than the
6 single problem that it even has the potential to cure.
7 Some of my colleagues have already discussed that
8 third issue. I'll focus my testimony on the first
9 two.

10 Because we have found virtually no fraud
11 of the type that a voter identification requirement
12 could fix, the Brennan Center is frequently charged
13 with denying the existence of voter fraud. This is
14 inaccurate, and I want to state that this evening with
15 absolute clarity. Unfortunately, some forms of
16 election fraud and misconduct do occur with some
17 frequency. Last year, for example, as in the past,
18 there were repeated instances of voter misinformation
19 and intimidation, such as when voters were told
20 erroneously that they would be arrested if they tried
21 to vote and had any unpaid parking tickets, or when
22 voters were given misinformation about where they
23 could vote, where their precincts were, the hours they
24 were open.

25 We've seen repeated instances in which

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1 election officials, without justification, have denied
2 registration to individuals who are eligible to
3 register and vote. In the last year, for instance, we
4 saw this problem with college students in a number of
5 different communities. Occasionally we've seen
6 individuals offer to sell their votes, and we've seen
7 individuals vote in jurisdictions in which they do not
8 reside.

9 And there have also been confirmed
10 examples of fraud and misconduct involving absentee
11 ballots. Some of this fraud has involved coercion or
12 bribing of absentee voters. Some of these instances
13 have involved schemes to submit multiple fraudulent
14 absentee ballots. All these acts should be and must
15 be condemned. When it exists, election fraud and any
16 kind of electoral misconduct should be investigated
17 and it should be published, and it often is.

18 Finally, I want to just observe that
19 there are some examples of mistakes made by
20 individuals who register to vote when they're not
21 eligible but without realizing that they're
22 ineligible. We saw examples in Arizona, for example,
23 where individuals who were applying to become citizens
24 and who had received letters from the immigration
25 authorities congratulating them and telling them that

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1 their application for citizenship had been approved,
2 registered to vote but before they had actually
3 formally taken the oath of citizenship.

4 And we saw an example in Wisconsin where
5 somebody showed up to vote, presented his prisoner
6 identification card that had the word "OFFENDER"
7 stamped in bold face across the face of it, and that
8 individual was actually allowed to vote.

9 Now, that's unfortunate. Obviously,
10 that individual shouldn't have been able to vote, and
11 those folks who hadn't completed the application for
12 citizenship should not have been registered. But
13 these are examples of error; they're not examples of
14 anyone trying to misrepresent their status or trying
15 to intentionally commit fraud. These folks shouldn't
16 be allowed to register to vote. But publicizing the
17 eligibility requirements and training poll workers is
18 a far more effective answer to those issues, those
19 human errors, than it is to require every single
20 eligible citizen in the state to present documentary
21 proof of identification of the sort that's proposed
22 here.

23 As to allegations of other types of
24 voter fraud, including many of the ones we've heard
25 discussion about today, our research has indicated

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1 that these claims proved baseless in all but the most
2 limited exceptions. Except in the rarest of cases,
3 these involve crying wolf. This is true of the most
4 frequently reported forms of punitive voter fraud --
5 double voting, voting in the names of dead people and,
6 most importantly, for the purposes of this hearing,
7 impersonation of registered voters at the polls.

8 Our exhaustive research reveals that
9 there is little to no credible evidence of
10 impersonation fraud in Texas or anywhere else in the
11 country, and that's the only form of misconduct that
12 this proposal would address. This is worth repeating:
13 The only problem that a voter ID requirement like SB
14 362 could possibly fix doesn't exist. Texans are
15 struck and killed by lightning more often than
16 impersonation fraud occurs, and there are far, far
17 more reports of UFOs every year than there are
18 instances of impersonation at the polls.

19 There are a number of reasons why
20 reports of fraud, impersonation fraud at the polling
21 place occur, but that they crumble when they're
22 subjected to scrutiny. First, a number of these
23 claims are based on attempts at data matching. We've
24 heard a bit about this today. This is when you
25 attempt to use computerized matching of data from the

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1 voter rolls against some other source of data; for
2 example, death records. And because of problems with
3 this data matching, the protocols that are used, it
4 often results in false positives, false indications of
5 somebody on the vote rolls who is also on one of these
6 lists.

7 For example, if matching is conducted
8 without controlling for a suffix like "Jr.," then John
9 Smith, Jr., may be thought to be the same person as
10 John Smith, Sr., who has died, and that will result in
11 a false report of somebody casting a vote in the name
12 of someone who is ineligible.

13 In Florida in 2000, we saw a matching
14 protocol used that only required a match of 80 percent
15 of the letters in the last name. So, for example,
16 someone with the last name of Ellis would be matched
17 with someone with the last name of Ellison. 20,000
18 voters, more than 20,000 voters were purged from the
19 rolls in that instance, and many of them were
20 frequently revealed to be inaccurate.

21 There are also a number of erroneous
22 reports of impersonation fraud that result from
23 clerical errors either on the part of poll workers or
24 on the part of the voter, such that when somebody
25 signs their name on the wrong line next to a voter

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1 with a very similar name or when a poll worker at the
2 end of the day scans the wrong bar code for a voter
3 and ends up recording erroneously that somebody voted
4 when they didn't.

5 Both of these sorts of problems turned
6 up in the claims of impersonation fraud that were
7 lobbed about before the 2008 election by the Texas
8 Watchdog website. They had a big story with a
9 dramatic headline -- "Dead Voters Cast Ballots in
10 Dallas County" -- and they provided 48 specific votes
11 that were questioned. Poll books and signature
12 rosters were available for 47 of these. And after a
13 very careful review, the Dallas Morning News concluded
14 that none involved a fraudulently cast vote.

15 So there are numerous since-debunked
16 reports of voter fraud, and these reveal that there
17 are very few, little to no examples of any confirmed
18 impersonation fraud. That's not for lack of trying.
19 You've heard about the five-year investigation by the
20 Department of Justice which failed to charge any
21 individual with impersonation fraud.

22 Here in Texas, Attorney General Abbott
23 spent two years and \$1.4 million fighting voter fraud,
24 didn't indict a single person for impersonation fraud.
25 There are obvious reasons -- I just want to mention

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1 the obvious reasons why impersonation fraud occurs so
2 rarely, if ever. The risk of getting caught for
3 attempting this crime is particularly high. The
4 penalties are very strict. And there's hardly any
5 payout. Under federal law, anybody that attempts this
6 is subject to imprisonment for five years, fine of
7 \$10,000. Under Texas law, that's 10 years in prison.
8 And if you're not an American citizen, you'll be
9 deported if you try and get away for this.

10 And bear in mind, the payoff for this is
11 extremely limited -- one single vote. If you were
12 really intent on defrauding the electoral system,
13 would you not choose a crime that gave you more bang
14 for the buck? Or would you risk 10 years in jail and
15 a \$10,000 fine to, as we heard earlier today, go over
16 to your neighbor's house, steal their voter
17 certification out of their mailbox and then attempt to
18 cast a ballot in that person's name?

19 I think the answer to that is obvious,
20 and I think that goes a long way in explaining why
21 impersonation fraud rarely, if ever, occurs in spite
22 of all the heated and ultimately misguided rhetoric
23 that we hear on this issue.

24 I see that my time is up, so I will end
25 there and would welcome any questions. Thank you.

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1 SEN. AVERITT: Sen. Davis, for what
2 purpose?

3 SEN. DAVIS: May I please ask questions
4 of this witness? Thank you, Mr. President.

5 **QUESTIONS FROM SENATE FLOOR**

6 SEN. DAVIS: Mr. Skaggs, I have a few
7 follow-up questions for you. And thank you for being
8 here and for your testimony before this body today.

9 What did the Brennan Center's 2006
10 national survey show about the percentage of people
11 who cannot prove citizenship or who lack government-
12 issued photo ID?

13 MR. SKAGGS: Well, it concluded a number
14 of things. First of all, the basic conclusion was as
15 many as 11 percent of U.S. citizens. And according to
16 census data at that times, that's more than 20 million
17 individuals didn't possess government-issued photo
18 identification. So that's the baseline, and that's
19 consistent with research that a number of other
20 studies have concluded.

21 But I think as much as that is an
22 alarming figure and as much as a 10 or 11 percent
23 figure would suggest, an unacceptably high number of
24 Texans who lack the kind of government-issued
25 documentary identification that will be required under

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1 SB 362, as much as the gross figures are cause for
2 alarm, the distinctions within that data are equally
3 alarming.

4 For example, elderly citizens are much
5 more likely to lack the kind of government-issued
6 identification that would be required under this bill.
7 18 percent, our survey found, of American citizens
8 above the age of 65 did not have government-issued
9 photo ID. That's true of photo ID.

10 And we've also heard anecdotally this
11 afternoon, or this evening, that many senior citizens
12 living, for example, at assisted living facilities
13 also lack a number of the non-photo forms of
14 identification that this bill could contemplate. They
15 may not have utility bills in their name. They may no
16 longer have bank statements. Certainly pay stubs
17 often they wouldn't have. So that's a concern for
18 seniors.

19 Minority citizens, citizens of color are
20 also disproportionately likely to lack these sorts of
21 government-issued identification documents. Our
22 survey found that 25 percent of African-American
23 citizens lacked the sort of ID that we're talking
24 about here.

25 And finally, the other issue of concern

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1 which we've heard about today is that citizens with
2 low incomes are much, much more likely to lack the
3 sorts of ID that we're talking about. Our survey
4 found that citizens making less than \$35,000 per year
5 are more than twice as likely to lack
6 government-issued identification as citizens making
7 more than that. And we've heard already today in
8 testimony from some of my colleagues about the huge
9 number of Texans who fall beneath that income level.

10 SEN. DAVIS: With that being said, how
11 is it that voter fraud is not a problem, if both the
12 U. S. Department of Justice and the Texas Attorney
13 General have launched widespread investigations and
14 prosecutions of voter fraud?

15 MR. SKAGGS: Well, I think it's
16 important to be careful about the term we use here.
17 And I think it goes a bit far to say that voter fraud
18 isn't a problem. I think -- certainly I've tried to
19 make clear in my testimony that there are numerous
20 types of fraud that are problematic, that do cause
21 real threats to the integrity of our electoral system.
22 And I would encourage this body to take up some
23 policies that might address those sorts of things:
24 Voter intimidation, misinformation, denial of the
25 right to register to citizens based on illegal

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1 reasons.

2 I think the point I'm trying to make is
3 that the form of fraud, the only form of fraud that's
4 at issue here with a big little SB 362, the
5 impersonation of a registered voter at the polls is
6 not a problem. It simply doesn't occur with any
7 frequency that would be sufficient to justify a bill
8 like this that has the potential to disenfranchise
9 many thousands of Texans.

10 So it's not fair really to say that
11 voter fraud isn't a concern. It's simply important, I
12 think, to speak in specific terms without generalizing
13 and muddying the waters, because when you're talking
14 about a bill like this that has the real potential to
15 disenfranchise many, many eligible Texas citizens,
16 it's got to be justified by something important. It's
17 got to be justified by a real problem, and that just
18 isn't the case here.

19 SEN. DAVIS: And in the State of Texas,
20 with the Attorney General investigations, can you
21 point to, given the result of those investigations,
22 the failure to demonstrate a problem with voter
23 impersonation?

24 MR. SKAGGS: Well, I think the results
25 of that investigation that I referred to by Attorney

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1 General Abbott, as well as the national investigations
2 that the Department of Justice has sort of inspired
3 and that U.S. attorneys across the country have
4 focused their efforts on, I think the results of those
5 speak for themselves.

6 They have in the end uncovered
7 wrongdoing and misconduct surrounding elections. They
8 have indicted folks for such things as vote-buying
9 schemes, campaign finance irregularities, a number of
10 different sorts of crimes of the sort that just aren't
11 addressed by a voter identification law of the sort
12 that we're talking about tonight.

13 So the fact that these huge substantial
14 resources were put into these efforts, the amount of
15 publicly, the amount of effort, and though they came
16 up with certain problems that aren't at issue tonight,
17 they couldn't come up with a single indictment for
18 anybody who was actually guilty of impersonation fraud
19 I think speaks for itself.

20 SEN. DAVIS: And in your opinion, does
21 the Senate Bill 362 that's before us today address any
22 of the issues of fraud that were uncovered by the
23 Texas Attorney General in that lengthy investigation?

24 MR. SKAGGS: No.

25 SEN. DAVIS: Now, regarding the Indiana

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1 case and the Supreme Court case, no party or amicus
2 cited even one case of impersonation at the polls in
3 Indiana, to the Supreme Court. Would it surprise you,
4 Mr. Skaggs, to learn that more Indiana voters have
5 been disenfranchised by the law in the last two years
6 than the number of reported cases of impersonation at
7 the polls cited to the Supreme Court or from anywhere
8 in the country in the last two decade?

9 MR. SKAGGS: No, I don't think that's
10 surprising. I think it's entirely consistent with the
11 point I was making earlier, that for all the rhetoric,
12 there's just not -- there's not any record of any
13 impersonation fraud. You're absolute right. During
14 the briefing presented to the Supreme Court -- and
15 there were briefs presented not only by the parties
16 but by dozens and dozens of groups on both sides of
17 the issue from all over the country, the Brennan
18 Center being one of those -- not a single one of the
19 briefs that were submitted had any confirmed evidence
20 of impersonation fraud.

21 But one of the groups in Indiana, the
22 Marion County Election Board, which was actually one
23 of the parties to the case, presented a brief in which
24 they represented to the Supreme Court that during the
25 2000 election, during some local elections in 2000, in

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1 that one single county, in Indiana, Marion County,
2 32 voters cast ballots that were rejected, ballots
3 that didn't get counted because the voters had failed
4 to comply with the voter ID requirements.

5 And that's not unique to Indiana. If I
6 could expand on that, we heard a moment ago about some
7 of the numbers out of Georgia, the 33 voters that had
8 their votes thrown out because they lacked ID in 2007.
9 And we heard that that, in the 2008 primary, was up to
10 254, 254 Georgians who, because they lacked a
11 government-issued ID of the sort that was required,
12 had their votes thrown out.

13 The gentleman who testified before me
14 said he was unfamiliar with those figures which were
15 published, among other places, in a Brennan Center
16 report. He may be more familiar -- if he's not
17 familiar with Brennan Center's report, he might be
18 more familiar with the Houston Chronicle which just
19 this morning undated those figures with figures from
20 the 2008 General Election. So we saw in the primary
21 last year 254. During the general election, that
22 number rose up to 700 Georgia voters, more than 700,
23 who had their votes go uncounted because they were
24 unable to comply with these ID requirements.

25 Now, we also heard that out of I believe

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1 it was 93 voters who showed up at the polls did their
2 honest best to try and cast a ballot, were forced to
3 vote a provisional ballot and that only one of those
4 individuals came back after the fact to actually
5 present the identification that was required. So
6 that's 92 out of 93 that had their votes cast away. I
7 don't think that's good math, that that many -- I
8 don't know what that is -- 98 percent, 97 percent. I
9 don't know what 92 out of 93 is -- but that that many
10 voters who cast their provisional ballot would have
11 their votes cast out I think should not be cause for
12 comfort, it should be cause for alarm.

13 MR. DAVIS: I think you're probably very
14 well aware of the fact that those of us on this Senate
15 floor who are concerned about the impact of adopting a
16 bill like Senate Bill 362 is the risk of
17 disenfranchising honest citizens in the State of Texas
18 and taking away from them the very precious right to
19 vote.

20 Given the numbers that you provided a
21 moment ago in terms of those who have been turned away
22 who were legally able to vote and, yet, under the new
23 photo ID requirements were not allowed to vote, how do
24 those numbers compare, those disenfranchised numbers
25 compare to real-world evidence in those particular

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1 states of voter impersonation that was documented to
2 be happening at their polls?

3 MR. SKAGGS: Well, one side of the
4 ledger, we've got -- in one case 33 in Fulton County,
5 92 in the State of Georgia last year -- over 700.
6 That's on one side of the ledger. Those are just
7 votes that were tossed out because of this
8 requirement. On the other side we have zero. So the
9 balancing act is pretty clear if you ask me.

10 Now, it may be true that 92 or 93 votes
11 out of 400,000 is a pretty small percentage. I don't
12 think any of us would argue that. I would argue that
13 92 people having their votes thrown out because they
14 lacked some sort of government identification is
15 completely unacceptable. But that said, it is true
16 that in Georgia they did have an opportunity, even
17 though none of them took advantage of it, to show up
18 within a couple of days afterward and present some
19 sort of identification. Maybe they didn't show up to
20 do that because they weren't told clearly that they
21 had to do it. Maybe they didn't do that because they
22 didn't have the time or they didn't have the ability
23 to get off work to make many extra trip. And maybe
24 they just didn't have the documentary proof, so maybe
25 that's the reason. We don't know. As we heard, there

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1 was no investigation done as to why those 92 people
2 were disenfranchised. We don't know. But at least in
3 Georgia, they had the opportunity to present that
4 identification and have their vote count, even if only
5 one of them did it.

6 It's interesting to me to hear just a
7 few minutes ago that Texas' provision for provisional
8 balloting is somehow less burdensome than what is the
9 policy in Georgia, because in Georgia at least these
10 voters are given the chance to make their vote count,
11 by coming in. Now again, it's difficult apparently
12 for them to do it. Most of them don't. At least they
13 have the opportunity.

14 This bill that is under consideration
15 tonight has no such provision. So a voter who doesn't
16 have the identification at the poll and is forced to
17 vote a provisional ballot under SB 362 has no
18 opportunity to show up and provide evidence to get
19 that vote counted. So it's hard for me, I guess, to
20 conceptualize how something would be less burdensome
21 that categorically gives you no chance of having that
22 provisional ballot get counted. To me that's not a
23 provisional ballot; that's a placebo ballot.

24 SEN. DAVIS: Very good point.

25 Also, Mr. Skaggs, voter ID advocates

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